No. 17-532

In the Supreme Court of the United States

CLAYVIN B. HERRERA,

Petitioner,

v.

STATE OF WYOMING,

Respondent.

On Writ of Certiorari to the District Court of Wyoming, Sheridan County

JOINT APPENDIX

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[1] The transcript in this joint appendix is an unofficial transcript prepared by a third party from an official recording of the circuit court proceedings. No official transcription of the circuit court proceedings exists. The parties have reviewed this unofficial transcript and agree that it accurately portrays the circuit court proceedings in all respects relevant to proceedings before this Court.

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL DISTRICT, SHERIDAN COUNTY, WYOMING

No. CT-2014-0002688

STATE OF WYOMING,

v.

CLAYVIN B. HERRERA,

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
09/12/2014	Case Filed Citation Issued
	* * *
03/26/2015	Def's Motion Regarding Request for Bench Trial; Reserving Right To Request Change of Venue
	* * *
03/27/2015	Hard copy-Def's Motion To Dismiss Hard Copy-Def's Brief In Support Of Motion To Dismiss
04/13/2015	Response To Motion To Dismiss Response to Motion for BT
	* * *

Date Filed	Docket Text
05/04/2015	Def's Reply In Support Of Motion To Dismiss
05/18/2015	Errata Notice Regarding Def's Reply Brief In Support Of Motion To Dismiss
05/26/2015	Hearing result for Motion Hearing held on 05/26/2015 11:00AM: re: dismissal Hearing Held-Denied-Motions to be filed by 7/1
* * *	
06/15/2015	Def's Objections To Proposed Form Of Order
06/17/2015	Notice re: Submission of Order
06/25/2015	Def's Notice Of Objections To Proposed Order
07/01/2015	Order Denying Motion to Dismiss -exec by SAC
07/02/2015	Def's Motion To Dismiss Brief in Support Of Def's Motion To Dismiss Affidavit
07/02/2015	Affidavit Of Steven Small; Daniel Gallacher; Timothy P. McCleary Phd. (in brown accordian file as documents to big to put in file) [*sic*]
* * *	

Date Filed	Docket Text
08/06/2015	Response To Motion To Dismiss (in brown accordian file as documents are to big to put in file) [*sic*] Motion In Limine Re Affidavits
	* * *
08/20/2015	Motion In Limine Re Treaty Rights Supplemental Response To Motion To Dismiss (in brown accordian file as document is too big to put in file) [*sic*]
08/31/2015	Def's Response to Motion in Limine
	* * *
09/16/2015	Def's Response To The State Of WY's Motion In Limine Regarding Treaty Rights
09/18/2015	Def's Reply In Support Of Its Motin [*sic*] To Dismiss Def's Limited Response To The State Of WY's Assertion Of "Conservation Necessity"
	* * *
10/05/2015	2nd Supplemental Response To Motion To Dismiss
	* * *

Date Filed	Docket Text
10/16/2015	Order Denying Motion To Dismiss, Striking Evidentiary Hearing & Granting The State's Motion In Limine exec SAC
* * *	
11/04/2015	Petitioner Herrera Petition For Writ Of Review; Certiorari; Prohibition
11/13/2015	Notice of Appeal
* * *	
11/19/2015	Response To Petition For Writ Of Review; Certiorari; Prohibition
11/20/2015	Motion To Avoid Delay Due To Appeal
12/04/2015	Def's Response To The State's Motion To Avoid Delay Due To Appeal
* * *	
04/11/2016	Def's Motion To Stay def's motion to stay denied cc CA; Gray Objection To Def's Motion To Stay
* * *	
04/12/2016	Motion In Limine
* * *	

Date Filed	Docket Text
04/13/2016	Def's Motion For Reconsideration Of Order Granting Stat'es Motion In Limine Re Treaty Rights [*sic*]
04/14/2016	Response To Motion To Reconsider & Motion In Limine For Offer Of Proof
	* * *
04/18/2016	Order After Pre-Trial Conference exec SAC
	* * *
04/19/2016	fax file: Def's Motion To Clarify Order After Pre-Trial Conference
04/20/2016	fax file: Order Granting Motion To Clarify Order After Pre-Trial Conference exec SAC (copy) Petitioner Clayvin Herrera's Emergency Motion To Stay Trial Court Proceedings While Appellate Review Is Sought (copy) Petitioner Clayvin Herrera's Petition For Writ Of Review From District Court Order Dismissing Appeal; For Writ Of Certiorari Or Mandamus; & Emergency

Date Filed	Docket Text
	Petition For Stay Of Apr 27 2016 Trial In Circuit Court
04/21/2016	Hard Copy: Def's Motion To Clarify Order After Pre-Trial Conference & Order Granting Motion To Clarify Order After Pre-Trial Conference exec SAC
04/22/2016	State of WY Response In Opposition To Petitioner Clayvin Herrera's Emergency Motion To Stay Trial Court Proceedings While Appellate Review Is Sought
04/25/2016	(copy) Petitioner Clayvin Herrera's Reply To Emergency Motion To Stay Trial Court Proceedings While Appellate Review Is Sought
04/26/2016	Order Denying Motion for Stay -WSC Motion in Limine for Judicial Notice Motion in Limine re: def's defense of reasonable mistake & objection to witness testimony
* * *	

Date Filed	Docket Text
04/27/2016	Memorandum Of Law RE Reliance On Official Misstatement Of Law
04/28/2016	Order Denying Motion for Stay -WSC Memorandum RE WRE 106
04/29/2016	Hearing result for Jury Trial held on 04/27/2016 09:00 AM: Criminal Jury Trial Held - Guilty Guilty (Guilty 23-06-205 b (801) ACCESSORY AFTER THE FACT) Judgment & Sentence entered Probation Imposed (23-6-205 b (801) ACCESSORY AFTER THE FACT) Probation term: 1 year (Unsupervised) Jail Term (23-6-205 b (801) ACCESSORY AFTER THE FACT) Confinement terms: Jail: 1 year. Suspended jail: 1 year. Verdict form
05/05/2016	(from Supreme Court WY) State Of WY Response To Petitioner Petition For Writ Of Review From District Court Order Dismissing appeal &

Date Filed	Docket Text
	For Write [*sic*] of Certiorari or Mandamus
	* * *
05/26/2016	Notice of Appeal Motion To Stay Fine Pending Appeal Judgment Appealed Order Granting Motion To Stay Fine Pending Appeal exec SAC
08/01/2016	Notice of Appeal from District Court
10/13/2016	Motion to Correct Omission From Record
10/18/2016	Order For Correction Of Omission From Record -from District Court
10/27/2016	Order Correcting Omission from Record -exec by SAC

FOURTH JUDICIAL DISTRICT COURT,
SHERIDAN COUNTY, STATE OF WYOMING

No. CV-2016-000242

CLAYVIN B. HERRERA,

v.

STATE OF WYOMING.

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
07/28/2016	Notice of Appeal Filed
7/28/2016	Letter to Appellant's Attorney re: Appeal Docketed/Setting Briefing Schedule 1c: Circuit
9/14/2016	Appellant/Defendant Herrera's Opening Brief
9/14/2016	Appellant's Appendix
9/14/2016	Appellant's Designation of Record
* * *	
09/16/2016	Appellant's Supplemental Appendix
09/23/2016	Motion of Indian Law Professors, Debra Donahue, Maylinn Smith, and Monte Mills for Leave to File Amicus Curiae Brief in Support of

Date Filed	Docket Text
	Appeal of Appellant Clayvin B. Herrera
09/26/2016	Motion of Crow Tribe of Indians for Leave to File Amicus Curiae Brief in Support of Appeal of Clayvin B. Herrera
10/13/2016	Motion to Correct Omission from Record
10/13/2016	Appellee's Designation of Record
10/13/2016	Brief of Appellee
* * *	
10/13/2016	Appellee's Appendix
* * *	
10/14/2016	Order for Correction of Omission from Record
10/31/2016	Appellant/Defendant Herrera's Reply Brief
11/08/2016	Order Setting Hearing - Oral Arguments (12/9/16 @10:30 am)
12/14/2016	Order Requiring Additional Briefing (Due 1-30-2017) 1c: Dessa Reimer
12/14/2016	Order Denying Motion for Leave to File Amicus Curiae Brief (Denied) 1c: Debra Donahue, Maylinn Smith,

Date Filed	Docket Text
	Monte Mills, Dessa Reimer, AG's Office
12/14/2016	Order Granting Motion for Leave to File Amicus Curiae Brief (Granted)1c: Andre Irvine, Dennis Bear Don't Walk, Dessa Reimer, AG's Office
01/30/2017	Appellant/Defendant Herrera's Supplemental Brief Regarding the Doctrines of Collateral Estoppel/Issue Preclusion and Res Judicata/Claim Preclusion
01/30/2017	Appellee's Supplemental Brief
04/25/2017	Opinion on Appeal (Affirmed) 1c: Circuit Court, Dennis Bear Don't Walk
06/08/2017	Order Denying Petition for Writ of Review
07/02/2018	Letter from U.S. Supreme Court re: Petition for Writ of Cetiorari Granted

SUPREME COURT OF WYOMING

No. S-17-0129

CLAYVIN B. HERRERA,

v.

STATE OF WYOMING AND THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, SHERIDAN COUNTY.

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
05/10/20107	Event - Docketed and indexed
05/10/2017	Fees - Docket fee received
05/10/2017	Petitioner Clayvin B. Herrera's Petition for Writ of Review
* * *	
05/22/2017	Motion - Amicus - leave to participate (Indian Law Professors); and received proposed amicus curiae brief
05/22/2017	Motion - Amicus - leave to participate (Crow Tribe of Indians); and received proposed amicus curiae brief
05/25/2017	Response in Opposition to Petition for Writ of Review
* * *	

Date Filed	Docket Text
05/31/2017	Reply to State of Wyoming's Response in Opposition to Petition for Writ of Review
* * *	
06/06/2017	Order - Denying petition for writ of review
06/06/2017	Event - Case closed

Excerpts from Trial Transcript
Circuit Court of Sheridan County,
State of Wyoming
April 27, 2016

[123] DUSTIN SHORMA,

called for examination by Plaintiff, being first duly sworn, testified as follows:

THE COURT: Thank you. Be seated.

DIRECT EXAMINATION

Q. (BY MR. LAROSA) Good afternoon. Could you please state your name.

A. Dustin Shorma.

Q. Where do you live, sir?

A. I live in Dayton, Wyoming.

Q. What do you do?

A. I'm the district game warden there.

Q. The -- what entity do you work for?

A. I work for the Wyoming Game & Fish Department.

Q. You're the principal investigator in the case at issue here, yes?

A. That's correct.

Q. How long have you worked for Wyoming Game & Fish?

A. I've been with the Game & Fish for 18 years. I've been a game warden for 17 of those.

Q. How long have you been in this area as a warden?

A. I have been in Dayton for almost five years now.

Q. Where did you work with Game & Fish as warden or any other capacity before you came here?

[124] A. I've been stationed in several other places. I was stationed in Casper, Newcastle, Jackson, Lander and Green River.

Q. Where were you born and raised?

A. I was born and raised in Sheridan.

Q. What did your father do?

A. Excuse me?

Q. What did your father do?

A. My father was the regional wildlife supervisor for the Game & Fish here in Sheridan.

Q. When you grew up, did you spend time outdoors in these parts?

A. A lot, yes.

Q. Where did you get the basic training you need to do the job that you do?

A. Well, I received training from several different places. I guess to start with, a requirement of warden is to have a degree in Wildlife and Fisheries Management. So I obtained a bachelor's degree from the University of Wyoming, graduating in 1999.

Q. Why is it important to have that?

A. It's in state statute.

Q. Oh, okay. When you get that training, do you learn about species identification?

A. Yeah. Mammalogy, morphology, wildlife [125] management, fisheries management.

Q. All right. So you got that. What do you have to do on top of that to then become a warden?

A. Well, to become a warden in Wyoming, there's a couple of different steps that an individual needs to take. It first starts with a written test. Depending on your score on the written test, you then go on -- at least at the time I took it, we went on to an oral board. The oral board asked us a lot of questions as far as our experience, our past, you know, kind of give you some situation-type scenarios. After the oral board, you proceeded on to a psychological profile and interview with a psychologist.

Q. Did -- by this test, is it a test -- do you have to establish proficiency?

A. It's a proficiency. It's just general wildlife knowledge, species knowledge, hunting, tracking, fishing knowledge. It's a real roundabout way to see what kind of expertise an individual has before the oral board has a chance to sit and talk with them.

Q. All right. Do you know how to collect field samples as part of an investigation in doing your job?

A. I do. I've taken several classes on field forensics, field firearm forensics, evidence packaging and handling, GPS technology, mapping technology, tracking, [126] that sort of stuff.

Q. Do you know how to -- have you received any training in preserving biological specimens for DNA testing?

A. Yes.

Q. All right. What are your duties?

A. Well, the duties of a game warden -- essentially Wyoming is split up into 50 different game warden districts. Within that district the game warden is responsible for obviously enforcing the Fish & Game laws in the state of Wyoming. We also have law -- excuse me, biological duties as far as assisting the biologists with wildlife management. Data collection and season setting. We're also a point of contact for the public to discuss issues involving Game & Fish or just kind of like a public information/education-type person for your district, as well as taking care of like nuisance, injured wildlife calls, dealing with wildlife damage, that sort of thing.

Q. Do you have authority to issue citations?

A. I do.

Q. Make arrests?

A. I do.

Q. Are you a peace officer?

A. I am.

Q. The things that you do, do they require that you [127] spend time in the field?

A. Yes.

Q. To carry out the basic tasks that you have, how -- how important is it -- is it important that you know your territory?

A. It's absolutely imperative. You know, most of the older game wardens will tell you, you know, having an intimate relationship with your district -- I mean, knowing every drainage, every fence post, every landowner, every drainage, it's very important for -- to -- to be an effective game warden.

Q. How did you get to know the Dayton district when you got here?

A. Essentially spending time talking to landowners, research reconnaissance, spending time out in the field, driving around, seeing country, taking roads that you've never been on, talking to sportsmen.

Q. You use maps in doing what you do?

A. Yes.

Q. The -- describe the Dayton district, where it is, please.

A. The Dayton district essentially is the top north strip of Sheridan County. The boundary starts essentially from the Sheep Mountain Road at the Montana line. It follows the Montana-Wyoming border to the Passaic Road in [128] eastern Sheridan County. Follows the Passaic Road south to the SR Buffalo Creek Road. Going west into Sheridan via the Wyarno Highway and district. Then continues west on 5th Street, Soldier Creek Road, the Beckton Road into Dayton, then it connects with Highway 14 at Burgess Junction, where 14A and 14 split. It continues on Highway 14A to the Devil's Canyon Road back to the Sheep Mountain Road back to Montana state line.

Q. And that was long enough I may have forgotten where you started. But the northern part of that, does it border the state of Montana?

A. Yes. For about 80 miles.

Q. And does it border the Crow Reservation?

A. Yes.

Q. The -- what's a hunt season?

A. A hunting season, essentially the biologist and wardens for a hunt area put together a recommendation based on essentially science, public comment, and formulate seasons specific to the animal that is going to be harvested. We formulate a season. We take public comment. We bring the season as a recommendation to our essentially Game & Fish commission, which is the private, you know, just normal layman committee that kind of oversees our organization, and then they vote to approve the season. Once it's approved by them, the governor [129] signs it.

Q. So what -- and you said it was season specific. So is it fair in understanding that hunt area is a geographic area for a particular species?

A. That's correct.

Q. All right. With respect to elk, what hunt areas are in the Dayton district?

A. My district encompasses Hunt Area 38, a small portion of Hunt Area 37 and Area 129.

Q. I think you intimated at this already, but what is the entity that has the power to set seasons for species in the state of Wyoming?

A. The Game & Fish Commission.

Q. And they have authority to set established hunt areas also?

A. That's correct.

Q. All right. I believe you've already established what they do -- how they do that. The -- do they publish information with respect to the seasons for the public?

A. They do.

Q. Do they do this in print?

A. Yes.

Q. Do they do this online also?

A. Yes.

Q. Does the Game & Fish Commission have a website [130] you can go get this information?

A. Yes.

Q. The -- okay.

MR. LAROSA: May I approach, Your Honor?

THE COURT: Yes.

Q. (BY MR. LAROSA) I'm going to show you State's Exhibits 1 and 2 and ask you if you recognize them.

A. Yes.

Q. What State's Exhibit 1?

A. State's Exhibit 1 is the Wyoming Game & Fish Commission's 2013 elk hunting regulations.

Q. What's State's Exhibit Number 2?

A. Number 2 is the 2014 Elk Hunting Regulation.

Q. All right. In those two documents can you find the season for Hunt Area 38 in -- in -- in Exhibit 1 with respect to 2013?

A. Yes.

Q. Can you also see the description of what Hunt Area 38 is in that booklet?

A. Yes.

Q. All right. The same question really for State's Exhibit 2. The -- can you see when the seasons for elk were in 2014 in that booklet?

A. Yes.

Q. All right. Can you see where Hunt Area -- what [131] Hunt Area 38 is described as in 2014?

A. Yes.

Q. All right. Now I'll show you State's Exhibit 3 and 4. You can keep these here. The -- and what I'm asking you is what -- do you see what they are?

A. Yes.

Q. What is State's Exhibit 3?

A. It's the 2013 elk regs with essentially Hunt Area 38 and the boundary for Hunt Area 38 written.

Q. All right. And what about State's Exhibit 4?

A. It's the 2014 Elk Hunting Regulations with the page for the hunting season in Area 38 in 2014, as well as the written boundary -- the boundary description.

Q. So can you see, in examining that -- so it's essentially an excerpt from the booklets?

A. Yes.

Q. Can you see, in examining the excerpt, whether the season was open or closed in January of 2014?

A. It was closed.

MR. LAROSA: Well, the State would move the admission of State's 3 and 4 at this time.

THE COURT: Any objection?

MS. GRAY: Yeah. We object to that, Your Honor. We think that the complete 1 and 2 as I understand are a complete booklet, and under the Rules of Evidence [132] 106, the complete document is the better evidence.

THE COURT: Mr. LaRosa?

MR. LAROSA: Well, I don't know the other hunt areas are going to be relevant to anything we're doing here. It's a mass of information that the jury does not need to be burdened with, and it's tailored precisely to the facts that are necessary in this case, and that's all we're trying to admit.

MS. GRAY: We disagree, Your Honor. We think the complete -- 1 and 2 are the ones that should be admitted.

THE COURT: I can resolve that. I'm going to admit all four. That way the complete manuals are admitted and the specific excerpts for purposes of the jury's convenience.

(State's Exhibit Nos. 1, 2, 3 and 4 received in evidence.)

MS. GRAY: Thank you, Your Honor.

THE COURT: All right.

MR. LAROSA: I guess the State would ask permission to publish at this time.

THE COURT: Yes.

Q. (BY MR. LAROSA) In those two booklets, are there -- is there a map that shows the hunt areas in the respective years?

[133] A. Yes.

Q. And does Hunt Area 38 remain the same from year -- is it the same in those two years?

A. Yes.

Q. I'm going to show you State's Exhibit 5. Do you recognize what I've showed you?

A. Yes.

Q. And what is that?

A. It's essentially the state of Wyoming split up into elk hunt areas, as well as the herd unit boundaries.

Q. All right. Is that map contained in those booklets?

A. Yes.

Q. All right. Does it give the jury some idea of the geographic location of Hunt Area 38 in Sheridan County?

A. Yes.

MR. LAROSA: State would move its admission.

MS. GRAY: No objection, Your Honor.

THE COURT: Exhibit 5 is admitted.

(State's Exhibit No. 5 received in evidence.)

MR. LAROSA: Permission to publish.

THE COURT: You may publish.

[134] Q. (BY MR. LAROSA) So you stated that the season was closed in January. All of January?

A. Yes.

Q. 2014, that is.

A. Yes.

Q. In that month, were there incidents of poaching that came to your -- or violations of out-of-season hunting that came to your attention?

A. Yes.

Q. Okay. Do you know the gentleman seated next to Ms. Gray at defendant's table?

A. Yes.

Q. Who is that?

A. It's Clayvin Herrera.

Q. Have you personally met him before?

A. Yes.

Q. When did you personally meet him?

A. I met him on January 30, 2014.

Q. When you met him, what was his occupation at the time?

A. He was a captain for the Crow Tribal Fish & Game.

Q. All right. How long had he been with Tribal Fish & Game at the time you met?

A. Two years.

[135]

Q. Where did he live at that time?

A. He lived on the Crow Reservation.

Q. All right. After you met him, did you have occasion in the ensuing months to investigate him for offenses?

A. Yes.

Q. Did you subsequently cite him?

A. Yes.

Q. The cited offenses, in what month did -- did you allege that they occurred?

A. January of 2014.

Q. Let's talk about how you came to meet Mr. Herrera. The -- who took the first action that resulted in contact? Was it him or was it you?

A. It was him.

Q. Please describe what happened.

A. I was in the regional office in Sheridan one day and my supervisor stopped me in the hall and said that he had received an email from the Wildlife Division who had received an email from our website. And he said there was somebody from the tribe who was interested in essentially catching poachers along the state line, and he asked me if I'd be interested in contacting that individual.

Q. All right. So it sounds like Wyoming Game & Fish has -- does Wyoming Game & Fish have an online [136] address?

A. On our Web page we have kind of just a generic, you know, contact us link that people can send messages to the Game & Fish.

Q. What happens when somebody sends a message to that general address?

A. It kind of gets sorted based on the topic, and, you know, I guess would be the best person to address it based on their area of expertise. So like fish questions go to fisheries biologists; wildlife questions go to wildlife biologists; law enforcement issues come to the game wardens.

Q. And what was the date that this email was sent?

A. It was January 13th of 2014.

Q. And what's the path it followed?

A. It was -- it was sent to our Web server, who forwarded it to our administrative assistant for the

chief game warden. Her name is Bea. Bea forwarded it to my supervisor who forwarded it on to me.

Q. All right. And do any of you still have that chain of messages on your computer?

A. Yes.

Q. The -- okay. The -- and so it was -- and when it was forwarded to you, did you read it?

A. I did.

[137] Q. The -- and you said -- did you say who Mr. Gilbert was, by the way? I'm sorry.

A. He's the regional supervisor for the Sheridan region of Game & Fish. Regional wildlife supervisor.

Q. And -- all right. Let me show you State's Exhibit 6. Do you recognize what I'm showing you?

A. Yes.

Q. What is it?

A. This is the email that was forwarded on to me from my supervisor.

Q. All right. And does it -- can you see the email address that it came from?

A. Yes.

Q. All right. And is there a -- is there a message contained in that email?

A. Yes.

Q. All right. And in that message, is there a phone number listed?

A. There is.

Q. And have you subsequently, since the time you received that, have you called that phone number?

A. Yes.

Q. All right. You called that phone number, who did you speak with?

A. I spoke with Clayvin Herrera.

[138] Q. Okay. Have you, subsequent to receiving that email, ever sent email to the email address that it came from?

A. Yes.

Q. All right. Have you done that -- how many times have you done that?

A. Four or five.

Q. Have you ever received a response from that address?

A. Yes.

Q. When you did, who was responding?

A. Clayvin Herrera.

Q. All right. Has -- when meeting with the defendant in person, has he ever told you that this was his email address?

A. Yes.

Q. When meeting with the defendant in person, has he ever told you that the phone number in the message is his phone number?

A. Yes.

MR. LAROSA: State would move the admission of State's Exhibit 6.

MS. GRAY: No objection.

THE COURT: 6 is admitted.

(State's Exhibit No. 6 [139] received in evidence.)

Q. (BY MR. LAROSA) Could you please read the message.

A. Yes. "Greetings. I would like to contact anyone who has an interest in poachers, especially poachers near the border with the Crow Indian Reservation in Montana. We would like to start building relationships with our neighbors that would be mutually beneficial. Please email me back or call me at (406) 839-8830. I would like to help in any way we can to catch violators near our mutual borders. Thanks. Clayvin Herrera, Captain, Crow Fish & Game."

Q. Is there a symbol on that email?

A. Yes.

Q. What is it a symbol of?

A. It's a symbol of -- that the Crow Tribe uses.

Q. Have you seen that symbol before?

A. Yes.

MR. LAROSA: Permission to publish, Your Honor.

THE COURT: You may publish.

Q. (BY MR. LAROSA) After you got that message and read it, what did you decide to do?

A. I contacted Mr. Herrera.

Q. Why did you decide to contact Mr. Herrera?

[140] A. Late December, early January of -- late December 2013, early January of 2014 I was having a lot of poaching incidents along the state line, and I wasn't getting anywhere with any of them. So, you know, I -- I thought it was a sincere, you know,

outreach on his part to try to maybe work together to catch some of these people, so I contacted him for his help.

Q. Had you had this type of cooperation before?

A. No.

Q. These poaching incidents that you're referencing, were any of them happening in Hunt Area 38?

A. Yes.

Q. The -- okay. How did you reach him? Were you able to reach him?

A. I was.

Q. And how did that happen?

A. I called the number on the email.

Q. Did he answer?

A. Yes.

Q. All right. And when did that happen?

A. It would have been sometime between the 21st and 24th of January.

Q. What, if anything, did you suggest that the two of you do?

A. Well, I had an instance where a couple elk had [141] been killed on the Wyoming side of the state line, and there was also a spike bull elk that was shot and left on the Crow side of the state line. So I called to tell him about it, and we arranged to meet so I could show him that spike and we could talk.

Q. This location that you were aware of, was it -- is it near -- how close is it to your mutual border?

A. Where we -- where we physically met?

Q. Yeah. Or where you suggested to meet.

A. Like 250, 300 yards from the state line.

Q. What's the hunt area across on your side at that location?

A. Area 38.

Q. The -- is it fenced at that location?

A. Yes.

Q. The -- does it have a name, that certain area that you described?

A. They call it -- the locals know it as Rocky Bottom. I told him to meet near the junction of the Red Gap and -- essentially Red Gap, Pass Creek and Little Horn Road.

Q. Was he familiar with the place when you suggested that location by name?

A. Yes.

Q. Did he require directions?

[142] A. No.

Q. Did you arrange for -- at a time to meet?

A. 10:00.

Q. The -- and did that meeting subsequently take place?

A. Yes.

Q. The -- let's discuss what happened at (unintelligible) the -- let's discuss what you did when you first met.

A. I introduced myself. There were some other individuals with him. We all kind of, you know, introduced ourselves to one another. We drove up the

Little Horn a little bit and walked up and I showed him the spike bull on the Crow Reservation that had been shot and left. When we were done looking at that, we went back to our trucks and we talked. He was interested in knowing what I knew about these poaching incidents. He was interested in knowing who I suspected was responsible for these poaching incidents. He was curious as to the capabilities of our forensic laboratory in Laramie.

Q. Let me stop you for a minute. You said you -- he was interested in whom you suspected. In your discussion, did you disclose any suspicions that tribal members might be involved in some of the offenses?

A. I did.

[143] Q. All right. And what was his interest when you mentioned that?

A. He wanted to know specifically who -- who I was looking at.

Q. Did you give him any names?

A. I did.

Q. Do you recall any of them?

A. I told them DL Singer.

Q. Was he familiar with DL Singer?

A. He didn't seem like he was.

Q. Okay. Did he give you any names of tribal members to address what you were talking about?

A. Yes.

Q. What names did he give you?

A. He gave me Daniel Takes Animal.

Q. All right. You mentioned that he asked you some questions about capabilities. Please go into that.

A. Well, like I guess the capabilities, can our labs match carcasses to heads, like with DNA. You know, just what kind of abilities they had to help us solve wildlife crimes, essentially. DNA was a big one, you know, matching heads back to headless carcasses.

Q. The -- is that something you do to solve investigations?

A. Yes.

[144] Q. The -- okay. And did -- does our lab have those capabilities?

A. Yes.

Q. And did you explain that?

A. I did.

Q. What type of analysis do they do to establish that -- a rack that's been taken or found in another location matches remains found elsewhere?

A. They got essentially wildlife databases specific to species that if they get a deer carcass without a head and they came upon a head during the course of an investigation, they can genetically -- DNA -- they can match the two to show it's the same animal.

Q. Okay. And did you basically tell them all of this?

A. Yeah.

Q. What did you say about -- if anything, about his organization and its abilities?

A. He kind of wanted to assure me this wasn't the tribal Fish & Game of old. That their officers were highly trained and professional.

Q. All right. As a result of this meeting -- and what's the date of this meeting?

A. January 30th.

Q. All right. And as a result of that meeting -- [145] and what do you guys agree to do, if anything?

A. We agreed to share information with one another as, you know, these, you know, poaching kind of popped up, we'd kind of share information if they're along the state line.

Q. Did he provide you any contact information while you were still there?

A. Yes.

Q. All right. Let me show you State's Exhibit 7. You recognize what I'm showing you?

A. Yes.

Q. What is that?

A. This is the -- essentially the Crow Nation Fish & Game Bison Regulations that -- this is the one that he gave me at that meeting.

Q. All right. And you answered earlier that on an occasion he's confirmed that the email address was his and the telephone number and that email was his.

A. Yes.

Q. How did he do that?

A. He wrote his email address on the back of it and he scratched out one of the old numbers that he had

and wrote in a new number underneath it. New cell number.

Q. Okay. What did you do after that meeting?

A. Well, honestly on the way home, I was -- was [146] kind of, I don't know, maybe excited that I'd be able to solve some of these cases. But by the same token, it bothered me, some of the conversations that we had. I started kind of thinking like I was maybe being taken advantage of, I guess.

Q. What did you do that night?

A. When I got home, I -- I got on Google and typed in Clayvin's name and went to other -- on Google, you can -- there's a bunch of tabs, like Internet search, images, you know, shopping or whatnot. I went to the images section, it popped up under Google and saw a whole bunch of photographs of Clayvin posing with trophy elk, trophy mule deer, trophy whitetail deer.

Q. Okay. When you did that, did it take you to any specific locations on the Internet?

A. It took me to -- I clicked on an elk photograph and it took me to a website known as monstermuleys.com.

Q. What is monstermuleys.com?

A. Monster Muleys is kind of a bragging board, I guess. And it's got like a forum component to it so hunters can like share information and show pictures of them with their animals that they've harvested.

Q. Were you aware, prior to ending up at that site when you did what you did that night, were you familiar that such sites exist?

[147]

A. I had known about it from like past investigations, but I didn't spend any time actively looking at it I guess.

Q. Are there sites other than Monster Muleys that do the same thing?

A. Yes.

Q. The -- and -- and are they, I guess, within some sphere, are they reasonably popular?

A. Yes.

Q. The -- okay. And were any of the animals that you saw him posing with elk?

A. Yes.

Q. And when you saw these pictures, you recognized it was Clayvin Herrera in those pictures?

A. Yes.

Q. The -- okay.

(Unintelligible side conversation between counsel.)

MS. GRAY: We're fine with the unredacted version.

MR. LAROSA: The unredacted?

MS. GRAY: Uh-huh.

MR. LAROSA: Okay. Thank you.

Q. (BY MR. LAROSA) All right. And --

MS. GRAY: What number is it?

[148] MR. LAROSA: That's 8.

Q. (BY MR. LAROSA) And I'm going to show you State's Exhibit 8. It is -- has a total of five pages. And so I'd like you to take a moment and examine each of

those five pages, please. Do you recognize what that is?

A. Yes.

Q. What is it?

A. This is -- these are essentially the photographs that were posted on the Monster Muleys website. This is the Monster Muleys website, actually.

Q. Okay. And does it show the title of the posting that you saw when you went and found those photos?

A. Yes.

Q. And does it contain the text that was posted along with the photographs when these photos were posted to Monster Muleys?

A. Yes.

Q. All right. And do you know -- what's -- who's in the first -- what do you see in the first photo?

A. The first photo is Clayvin Herrera posing with a mature bull elk.

Q. And what's in the second photo?

A. The second photo is Clayvin Herrera posing with the previous photo of a bull elk head and appears to be a back strap around his neck.

[149] Q. All right. And what is in the third photo?

A. The third photo is a dead bull elk with two individuals shaking hands.

Q. All right. And what's in the fourth photo?

A. The fourth photo is a young man holding a bull elk head.

Q. All right. And what's in the fifth photo?

A. The fifth photo is a young lady with a buck mule deer.

Q. The now -- let me ask you a couple of questions. On the date that you found this on Monster Muleys -- and this is the evening of January 30th, correct?

A. Correct.

Q. The two individuals in the photo on page 3, did you know who they were?

A. I knew who one of them was, but I didn't know which one he was.

Q. And are they -- does the post itself identify who they are?

A. Yeah. It says it's Ronnie Fisher, and it tells you what picture he's in.

Q. All right. And do you know who all the people -- and this post basically identifies these individuals?

A. Yes. The --

[150]

Q. And what's the -- the -- and have you found the sites where any of these photos were taken?

A. Yes.

Q. All right. Which -- which sites have you found?

A. I found all of them but the young lady posing with the mule deer buck.

Q. All right. And were all those sites in the state of Wyoming?

A. Yes.

Q. Have you been able to retrieve any of the elk rack heads that are seen in any of the photos?

A. Yes.

Q. The -- and are those the racks that you retrieved in this investigation?

A. Yes.

MR. LAROSA: The State would move the admission of State's Exhibit 8.

THE COURT: Any objection?

MS. GRAY: No objection.

Q. (BY MR. LAROSA) And what's the title of the post?

THE COURT: 8 is admitted.

(State's Exhibit No. 8 received in evidence.)

Q. (BY MR. LAROSA) What was the -- what was the [151] post to Monster Muleys called?

A. The post was called Good Year on the Crow Reservation.

Q. And when was it posted to the Monster Muleys forum?

A. It was put on there January 23rd.

Q. Okay. The rack that's in the photos with Clayvin Herrera, who did you get that rack -- you said you were able to get them, who did you get that from?

A. I recovered that rack from Clayvin Herrera.

Q. The one in the photos with the two individuals -- what are their names?

A. It's DL Singer and Ronnie Fisher.

Q. Did you get the rack in that photo from either of them?

A. I did. I recovered it from Ronnie Fisher.

Q. And page 4, who was -- who was the individual in that photo?

A. This is Colton Herrera, Jr.

Q. Were you able to retrieve the rack in that photo?

A. I was.

Q. Who did you get that from?

A. His father, Colton, Sr.

MR. LAROSA: Permission to publish.

[152] THE COURT: Yes, you may publish.

Q. (BY MR. LAROSA) Okay. What happened? What was going on in your district as you moved into February?

A. I was having -- finding and having reported to me more and more elk being shot and killed in Wyoming.

Q. The -- were any of these violations happening in Hunt Area 38?

A. All of them were Hunt Area 38.

Q. Did you -- did you make any further contact with Mr. Herrera to seek the cooperation which he said would be available?

A. I did.

Q. How did you do that?

A. I reached out to him via email.

Q. And did you have a specific reason -- and what month was that?

A. It was in February.

Q. Did you have a specific reason why you contacted him in February of 2014?

A. I -- I found a large bull elk that had been shot off the Pass Creek Road, and the only thing that had been taken was a little bit of back straps and head had been removed. And I was just curious to know if he heard or seen anything that might have involved that bull.

Q. Did you send it to the email address that he [153] gave you on the booklet and -- the email address that he used to make first contact with you?

A. Yes.

Q. The -- and did he respond?

A. He did.

Q. And do you still have that -- do you still have a record of that on your computer?

A. I do.

Q. Show you State's Exhibit 9 now. Take a moment to read it, please. And please tell me if it is that communication -- both the email you sent and then what -- the one you received in response.

A. Yes, it's the email I sent and the one I received back from Clayvin.

Q. All right. And does he -- in your email, do you identify the kind of -- the -- the location where you found it?

A. Yes.

Q. And does he offer to help you?

A. Yes.

Q. Does he offer to help you in a specific way?

A. Yeah, he --

Q. You can just say yes.

A. Yes.

MR. LAROSA: The State would move the [154] admission of State's Exhibit 9.

MS. GRAY: No objection.

THE COURT: 9 is admitted.

(State's Exhibit No. 9 received in evidence.)

Q. (BY MR. LAROSA) The -- what -- so -- just summarize your message. It's kind of long, but basically what did you tell him and then what was his response?

A. My message was that I had a poaching case that I was working on. I didn't know if anybody had come into his office looking for a transportation tag. I kind of told him the timeline of when I found it and asked him if he had heard or knew anything. And if he had, he could contact me.

Q. All right. And essentially does -- is this -- did you suspect a tribal member might be involved?

A. I did.

Q. What was -- read his response, please.

A. "Dustin, hey, sorry I haven't responded. I've been out of the office for a couple of weeks on the road promoting bison hunting in Salt Lake City, Utah. Give me some good locations and I can throw them up on a map as well as the dates. Let's get those poachers."

Q. All right. Thank you.

MR. LAROSA: Permission to publish.

[155] THE COURT: You may publish.

Q. (BY MR. LAROSA) Do you use maps in doing what you do?

A. I do.

Q. The -- do you try to be pre -- why do you use maps?

A. I use maps, obviously, for navigation, knowing where I'm at. But also processing crime scenes, documenting wildlife distribution, documenting land boundaries of private landowners, that sort of thing.

Q. Were you at all surprised that he apparently used maps also?

A. No. Huh-uh.

Q. The -- okay. Let's -- what's the date of his response? Or just approximately, if you don't have it anymore.

A. It was two weeks after I -- it was February 24th, I believe.

Q. So still February?

A. Yes.

Q. What happens -- what's going on now, as we move into March?

A. I was continuing to receive reports and finding carcasses on my own, bull elk and -- that had been shot along the state line.

[156] Q. What's your reaction to these unfolding events? What are you doing now?

A. I was getting pretty desperate. I mean, you know, the public, you know, entrusts a game warden to enforce the game laws. It was rather embarrassing finding all these elk, and I had no evidence on any of

them to tie people to. It was -- it was getting frustrating. And I was exhausting every lead to try to find some thread of evidence that could be used to solve one of these cases.

Q. And these additional cases, how many of them are actually in Hunt Area 38 in proximity of the border?

A. All of them.

Q. All right. So what did you do in an attempt to get a lead?

A. Well, based on some of the evidence, you know, the way vehicles were coming and going, it was obvious to me that there was a possibility that it was members from the Crow Tribe who were responsible for some of this. So I got on some of these forum sites that have pictures of dead elk, and I just started downloading pictures and taking note of names who was -- who the hunters were and where they said they were and saving all that to my computer.

Q. All right. Did you form any impressions from the sites of these photographs?

[157] A. Yeah. A couple of them looked like they were in Wyoming.

Q. Okay. And you -- so you say you downloaded them and preserved them for later review?

A. Yes.

Q. You mentioned earlier that some -- the identity of the individuals in the photos that you found at Monster Muleys were Clayvin Herrera, DL Singer, Ronnie Fisher and Colton Herrera, Jr., correct?

A. Yes.

Q. Did you do anything specific to any of those individuals?

A. Yes. I went to their Facebook pages and looked at postings they had made. Anything that had an elk picture or any relevance to elk hunting, I saved to my computer.

Q. Did you go to the Facebook page for Ronnie Fisher?

A. I did.

Q. Did you go to the Facebook page for DL Singer?

A. I did.

MS. GRAY: Is that redacted?

MR. LAROSA: That is, yes.

(Unintelligible side conversation between counsel.)

[158] MS. GRAY: (Unintelligible) why don't you ask him if he remembers what it says.

MR. LAROSA: Okay.

Q. (BY MR. LAROSA) I'm going to show you two exhibits. State's Exhibits 10 and 11. Let's do them in turn, please. What is State's Exhibit 10?

A. State's Exhibit 10 is Facebook pictures, as well as comments made on those pictures that I downloaded.

Q. All right. And is this what you -- when, approximately, is the date that you went to the Facebook posting of Ronnie Fisher?

A. April 26th.

Q. And does the State's Exhibit 10 show what you saw?

A. Yes.

Q. All right. Is anything that you saw there something that you had seen previously on Monster Muleys?

A. Yes. The picture of the two individuals shaking hands that was on Monster Muleys is also on Ronnie Fisher's Facebook page.

Q. All right. And are you familiar with the -- with -- and are you -- are you familiar with Facebook yourself?

A. Yes.

Q. The -- do you -- do -- have you ever utilized [159] Facebook yourself?

A. Yes.

Q. The -- have you ever posted anything on a Facebook page, either yours or anybody else that you know?

A. Yes.

Q. All right. And when you do, does Facebook basically record the posting and put it on the page?

A. Yes. It puts a --

Q. And when that happens, is the date and time that you made that posting recorded and preserved on the page?

A. Yes.

Q. The -- all right.

MR. LAROSA: And State would move the admission of State's Exhibit 10.

MS. GRAY: No objection.

THE COURT: 10 is admitted.

(State's Exhibit No. 10 received in evidence.)

Q. (BY MR. LAROSA) The -- is there any discussion that took place on the Facebook page of Ronnie Fisher that you saw on April 26th discussing the photograph of the two individuals standing over the dead elk?

A. Yes.

Q. All right. And is that discussion contained in -- in that State's Exhibit 10?

[160] A. Yes.

Q. All right. And who does this discussion take place between?

A. Jerry Purdue Rizzo and Ronnie Fisher.

Q. And what does Jerry -- who asked the question?

A. Ronnie posted a picture of him with the first bull. Jerry asked him, "Nice, where did you get him at?" Ronnie Fisher replied, "No tell 'em ridge. Haha."

MR. LAROSA: Permission to publish, Your Honor.

THE COURT: You may publish. Can I please have that back? I'm sorry. I'm not quite done.

Q. (BY MR. LAROSA) The -- the -- there's something -- how many pics are actually Facebook (unintelligible)?

A. There's three pictures.

Q. All right. And how many of them did you actually see at the Monster Muleys thing?

A. Just one.

Q. All right. Is there anything about those other two photos that you noticed?

A. There -- the pictures of Ronnie posing with this bull are not -- they're not the bull that he -- that Clayvin had claimed he killed in Monster Muleys. It's a [161] different elk.

Q. The -- let me see. Make sure I know what you're talking about. Let's go -- State's Exhibit 10 has two pages, right?

A. Correct.

Q. First page is the page that you found at Monster Muleys of Ronnie Fisher, DL Singer over a dead elk, correct?

A. Correct.

Q. On the next page you see that photo again, but it's smaller, correct?

A. Correct.

Q. And the photo underneath that is something you had not previously seen, is it?

A. No.

Q. All right. Is there anything that you recognized in that photo?

A. Yeah. I recognize it as being the same elk that Clayvin Herrera was posing with that he posted on Monster Muleys.

MR. LAROSA: Can I have State's Exhibit 8 back, please? (Unintelligible.)

Q. (BY MR. LAROSA) What do you see?

A. Well --

Q. Looking at -- let me hold this up, please.

[162] A. Okay.

Q. Try to explain the difference.

A. Okay. So looking at these two bulls, obviously you can see on the left side of this bull, one of his -- they call them eye guards, his second point coming out, it's kind of stumpy, it's not real long. So in the photograph it tends to disappear. Well, in this photograph it also tends to disappear. But if you notice, there's a rifle leaning against this tree, it's the same rifle that's leaning against this tree. And just looking at the trees and the position of the elk and the rifle, I assumed it was the same location, the same elk.

Q. All right. Is there anything about -- other than the rifle, does the site appear in any way similar to anything you saw previously?

A. Yeah. It's -- you know, it's the same burned-out trees. There's -- you can't really see it very well. There's a burned-out knot at the base of this tree you can see in both photographs. Just the -- I guess the distance, because it -- being that it's burned, there's some trees behind it that didn't burn. It seems the relative distance between this bull and the burned-out trees that weren't burnt is about the same in both photographs.

Q. Okay. Let's go to State's Exhibit 11 now. What [163] did I do with that? (Unintelligible.)

MS. GRAY: (Unintelligible).

MR. LAROSA: That's what's above it.

MS. GRAY: (Unintelligible) substitute these.

MR. LAROSA: Okay. That would be fine.

Q. (BY MR. LAROSA) What's State's Exhibit 11?

A. State's Exhibit 11 is a photograph and some comments that I downloaded off of DL Singer's Facebook page -- or copied and pasted off of DL Singer's Facebook page.

Q. All right. And when you looked at that -- and does it -- does the State's Exhibit 11 accurately show what you saw -- when did you go to that -- is that also on April 26?

A. That was also on April 26th.

Q. Does it show, essentially, what you saw on the page on that occasion?

A. Yes.

Q. All right. And the discussion -- does it contain discussions that occurred, likewise, when you saw it on April 26th?

A. Yes.

Q. All right. Did you see anything in there that you recognized?

[164] A. Excuse me?

Q. Did you see anything in this -- in State's Exhibit 10 that you saw the Facebook posting of DL Singer that you had previously seen?

A. Yes. This was the same photograph that I saw on Monster Muleys.

MR. LAROSA: All right. And State would move the admission of State's Exhibit 11.

THE COURT: Any objection?

MS. GRAY: No objection, Your Honor.

Q. (BY MR. LAROSA) The --

THE COURT: 11's admitted.

(State's Exhibit No. 11 received in evidence.)

Q. (BY MR. LAROSA) And, likewise, is there any discussion -- Facebook posts that are taking place on that day?

A. Yes.

Q. All right. And are they a post by DL Singer?

A. Yes.

Q. Does anybody ask DL Singer in a post underneath the photograph of -- of Ronnie Fisher and DL Singer standing over that elk?

A. Yes.

Q. And what is that conversation?

[165] A. Abrami Half said, "Nice. Where did you get it?" And DL Singer said, "Don't tell ridge. Laugh out loud."

Q. And what date and time does that conversation happen?

A. It was on January 18, 2014 at 7:10 and 7:14 p.m.

Q. And I forgot to ask you. The same conversation that took place in State's Exhibit 10 with Ronnie Fisher, what's the date and time of that conversation?

A. That was on January 18th at 5:23 p.m.

Q. All right. Are you familiar with a "don't tell ridge"?

A. No.

Q. Are you familiar with a "no tell 'em ridge"?

A. I should say I am in the fact that when hunters normally don't want people knowing about an area

where they were hunting, they call them "don't tell creek," "don't tell ridge," et cetera, so...

Q. Okay.

MR. LAROSA: Permission to publish, Your Honor?

THE COURT: You may publish.

Q. (BY MR. LAROSA) Okay. What happens after you see all -- did you likewise, with DL Singer, did you preserve -- you downloaded that and preserved it?

A. Yes.

[166] Q. What happens after you have all this information?

A. Well, I kind of had a hunch -- just based on the limited topography and vegetation I could see from the photographs, I kind of had a hunch where it was at, but I wanted to confer with some people who knew the area a lot better than I did.

Q. All right. Which is -- the Monster Muleys photos, is there one that -- in particular that shows the greatest expanse of terrain that might give you some idea as to where it is?

A. Yeah. The picture of Colton Herrera's essentially what I used, but --

Q. Okay. Who is Glenn Sheeley?

A. Glenn Sheeley is a business owner in Dayton. He's a big outdoorsman. He likes to antler hunt. He likes to hunt elk. He has a bear bait. He's an avid outdoorsman.

Q. Okay. And was -- had he reported any of the incidents of poaching that occurred in Hunt Area 38?

A. Yes. He reported 12, I believe.

Q. Did you have occasion to meet with him during the course of this investigation?

A. Yes. In May I took -- I took this photograph to him. And I just -- I just asked him where he thought it [167] might be.

Q. Did he have an idea where it might be?

A. He did.

Q. Where was that?

A. He believed that it was somewhere around the Marble Quarry Road, up -- I guess being up -- up the mountain from what they call the Upper Tank.

Q. All right. When he told you where he thought it was, were you familiar with that area yourself?

A. Yes. I --

Q. Where it was, what --

A. Yes. I believed that's where it was. So it kind of confirmed my suspicion.

Q. All right. What hunt area is that in?

A. That's in 38.

Q. All right. And is Hunt Area 38 in Sheridan County?

A. It is.

Q. Okay. And this is on May 16th. What do you do after your hunch as to where that photo may have been taken is confirmed?

A. Glenn actually told me of four other carcasses he had found while he was antler hunting in the same general vicinity. So investigator Scott Adell and I went

to look at those. And we had kind of made the plan when [168] we were finished looking at those carcass -- carcasses, we were going to hike around and see if we could find where this location is at.

Q. Who is Scott Adell?

A. Scott Adell is a wildlife investigator for the Game & Fish here in Sheridan.

Q. All right. And did he agree to accompany you?

A. He did.

Q. And what date did that occur on?

A. That was on May 19, I believe.

Q. All right. And what type of equipment did you bring with you to the field?

A. I brought my camera. I always bring a -- like a ruler to measure with. I brought my GPS. I brought this photograph -- I brought all the photographs with me.

Q. All the Monster Muleys photographs?

A. All the Monster Muleys photographs with me.

Q. Okay. Did you bring anything that would assist you in the collection of evidence, biological evidence?

A. Yes. I brought seizure tags. I brought my DNA kit. You know, just some bagging that I could package --if I found anything, I could package and preserve evidence.

Q. All right. Were you able to find any of the sites that are portrayed in the photos of Clayvin Herrera, [169] Ronnie and DL [sic] Fisher and Colton Herrera, Jr. in the photographs that you originally found at the Monster Muleys forum?

A. Yes.

Q. How many of them were you able to find?

A. All of them.

Q. Did you find all of the sites that day?

A. I found all the sites that day.

Q. The -- are all of those sites in Hunt Area 38?

A. Yes.

Q. What was their proximity to each other?

A. They were on a hillside. All of them probably would have fit on a football field -- you know, all within a football field.

Q. All right. What's the name of the location where you found these sites?

A. Where they were at, it's essentially just the ridge above Eskimo Creek.

Q. Is the -- is there a state line fence in that general location?

A. Yes.

Q. All right. And how far away from that fence are these sites?

A. It's a mile.

Q. Were you able to find any remains at any of [170] these sites that date?

A. Yes.

Q. And how many of the sites were you able to find remains?

A. We found remains at the site where Clayvin was kneeling next to the mature bull elk. Oops. Sorry.

We were able to find remains at the site where Ronnie and DL were shaking hands. We found a fourth bull that had been untouched. But the -- the bull that we suspected Colton having killed, we couldn't find it tnat day.

Q. All right. Were you subsequently able to find remains in the vicinity of that site?

A. Yes.

Q. When did that occur?

A. That was June 2nd.

Q. Okay. The -- and did you photograph -- can you please explain to the jury how -- how did you actually find the sites? A. So this -- this picture right here, essentially hiking up the ridge -- I mean it was essentially just -- I continued hiking for, I don't know, two or three hours, trying to match the topography as best I could to this picture. Ironically enough, when I started walking in the berm -- right when I kind of thought I had hit the [171] jackpot, I looked down and there was an elk pelvis and spinal column laying on ground with what I call a rumen ball. If an elk or deer or antelope, if their rumen freezes, it turns into like this hard mass that doesn't really disintegrate because it's just grass. Like a big smashed grass ball. That was laying there with the -- the pelvic bone and the spinal column essentially laying right in it. So I inadvertently, which -- I walked right to it.

Q. The -- all right. And what was it -- just one moment, please.

I'm now showing you what is labeled as State's Exhibit 12.

MS. GRAY: Your Honor, may I voir dire the witness for a moment on this? I just want to find out who produced --

MR. LAROSA: I think if I get some leeway, I can establish very --

THE COURT: All right.

MR. LAROSA: -- the construction of the --

THE COURT: Okay.

MR. LAROSA: -- of the piece of evidence.

THE COURT: Please do.

Q. (BY MR. LAROSA) When you're at the sites that day, did you document what you found by taking photographs of the sites?

[172] A. I did.

Q. All right. And did you save those photographs?

A. I did.

Q. Did you do anything to the photographs at any later date to sort of identify the things that you saw in the site photograph that you saw bore on whether it was the same site from the photograph you found at Monster Muleys?

A. I did. At the scene, comparing the photograph to Monster Muleys, I tried to take photographs that I thought would best match the scene. I later went home and put red arrows kind of identifying unique, you know, curvature of a tree or a chunk of bark or the way a tree was laying on another tree that was very unique. I compared the photographs on Monster Muleys and the photographs I had taken.

Q. Okay. And did you also photograph the remains?

A. I did.

Q. All right. And when you -- when you -- did you see the -- did you inspect the remains when you found the remains that you found at the site that matched the photos of Clayvin Herrera at Monster Muleys?

A. I did.

Q. Did you observe anything when you inspected those remains?

[173] A. Looking at the remains, like holding them in my hands and visually looking at them, I knew from one of the photographs that he had cut off the back straps of this elk. So looking along the spinal processes of this elk, you can see knife marks or tool impressions in the bone, indicating someone had cut meat from the bone of that animal.

Q. All right. Let's go through the State's exhibit. And do you believe that State's exhibit -- what are the first two pages of State's Exhibit 11? 12, rather. I'm sorry.

A. Page 1 is a picture I recovered off of Monster Muleys with Clayvin posing with the back strap and the bull elk head.

Page 2 is a comparison photo I took where I believed the photograph -- or essentially where I believed Clayvin Herrera was standing when that photograph of him was taken.

Q. You're in the photograph. So who actually took the photograph?

A. Scott Adell took that photograph.

Q. The -- the -- and if -- it's set out so that one can look at both of them simultaneously, are they not?

A. Yeah.

Q. And could the jury, in looking at -- please [174] don't show it to the jury.

A. Oh.

Q. In examining pages 1 and 2, could the jury discern the characteristics that you saw when you were at that site on May 19th?

A. Yes.

Q. All right. What are pages 3 and 4?

A. Page 3, that is a picture of Clayvin Herrera that I downloaded off Monster Muleys with arrows that I had put on the pictures identifying unique characteristics of the background.

Q. All right. And looking at pages 3 and 4 with the arrows attached, does that make -- would that make it useful for the jury to see the characteristics that you in particular saw when you were at that site?

A. Yes.

Q. And what's on page 5 and 6?

A. Page 5 and 6 -- page 5 is a picture that I downloaded of Clayvin Herrera kneeling next to the bull elk. Page 6 is the -- the pelvis and spinal column and the rumen material as I found them on May 19th.

Q. In looking at these two photos contemporaneously, do you see -- is it -- does it show kind of the -- can you see the characteristics that led you to believe that you had found the site?

[175] A. Yes.

Q. What are pages 7 and 8?

A. Pages 7 and 8 -- page 7 is that same photograph of Clayvin kneeling next to the bull elk with arrows kind of pointing out unique features of the topography and vegetation. And page 8 is a picture I took with those same arrows pointing out the same unique features.

Q. And looking at (unintelligible) would it allow the jury to see the characteristics that in particular you saw that helped you identify the site as the right site?

A. Yes.

Q. And what were pages 9 and 10.

A. Page 9 is the pelvis and spinal column as I found it, undisturbed. Page 10 is a close-up of tool marks on one of the spinal processes.

Q. And what is page 11?

A. Page 11 is another photograph of tool marks on a different spinal column.

MR. LAROSA: State would move the admission of State's Exhibit 12.

THE COURT: Any objection on 12?

MS. GRAY: No objection, Your Honor.

THE COURT: All right. 12 is admitted.

(State's Exhibit No. 12 received in evidence.)

[176] Q. (BY MR. LAROSA) And why don't I try -- try to change it, rather than publish it. Do you think you can hold it up and just point to the photo with the arrows at least and show the jury what it was you saw that led you to believe you had found the place.

A. Okay. So here's the picture of Clayvin holding his bull. There is an old kind of burned-up stumpy tree here that kind of went to a point. There was a -- kind of a crook in a tree up here that was kind of odd. There was a tree that was leaning in front of a pine tree -- a burnt tree leaning in front of a pine tree that didn't burn. And then there was kind of a unique piece of bark. When I went back to the kill site -- or when I found the kill site, I could find the same unique burnt tree, the unique crook in the tree, the unique bark, as well as the unique leaning burned tree in front of the unburned tree.

Q. All right. And can you identify -- show the jury the photo of the remains that you found. Actually, and there's two set of arrow comparisons. Can you go to the second one and do that likewise, please.

A. Yeah. So here's the photograph of Clayvin with the bull off Monster Muleys. There's kind of a goofyshaped tree that's got three different branches kind of coming off the bottom. There's kind of some leaning trees that lean in a weird kind of angle. They make like two [177] Xs. There's a burned-out knot at the top of this tree, and there's a very distinct burned-out knot at the bottom of this tree. And at the kill site we found the exact burn on the bottom of the tree. Here's the three -- the tree with three different branches coming out of it. There's kind of unique crossing of the two different ones falling down. There's the knot that corresponds to this. As you can see, there's actually the pelvic bone and here's the rumen contents from that.

Q. Is there a close-up photo of the remains that you took?

A. Yes.

Q. Please just show that to the jury. And can you show the jury in any of the close-up photos of the remains where you observed tool marks.

A. Yeah. If you look -- being that he cut the back strap off, he'd be cutting straight down on the animal. Essentially, if you can imagine, this is essentially like a dorsal order of a process coming off the side of the spinal column where they have the -- standing upright, you can see where the knife mark came across the back of the -- on both these photographs, indicating that they had used a knife to cut the meat off.

Q. Thank you very much.

The -- what site did you find first?

[178] A. That one.

Q. All right. The -- how soon thereafter were you able to find the other sites? You've testified they were all found within a football field of each other.

A. Fifteen minutes.

Q. The -- okay. Show you State's Exhibit 13. Will you please take a moment and examine that. And who put these exhibits together, by the way?

A. I did.

Q. Thank you. The -- what is State's Exhibit 13?

A. State's Exhibit 13 is photo comparisons between the picture of DL Singer and Ronnie Fisher with Ronnie's bull and the background comparison when we actually hiked into the area.

Q. That's the Monster Muleys photo?

A. That's correct. The Monster Muleys photo.

Q. All right. What's photo number 2?

A. Photo number 2 is based on the -- it's the topographical and vegetative features, what we figured to be the spot where Ronnie had killed his bull.

Q. What are pages 3 and 4?

A. Pages 3 and 4 are kind of comparison photos of the picture of Ronnie and DL from Monster Muleys in the picture I took with arrows highlighting specific features of -- that are similar in both photographs.

[179] Q. And these are all features you noticed in the field?

A. Yes.

Q. What are photos 5 and 6?

A. Photo number 5 is the spinal column with some ribs, as well as the -- the pelvic bone of a bull elk that was actually, I don't know, four -- four yards from this spot where I took the photograph -- the comparison photograph.

And 6 is close-up picture of tool marks on -- along the spine -- the spinal bone of an elk that I took from that carcass.

Q. These photos accurately display what you found at that site on May 19th?

A. Yes.

MR. LAROSA: State would move the admission of State's Exhibit 13.

MS. GRAY: No objection, Your Honor.

THE COURT: 13's admitted.

(State's Exhibit No. 13 received in evidence.)

Q. (BY MR. LAROSA) And if you can just go to the pages 3 and 4, the arrow photos, and hold them up to the jury, and just, if you could, please, take a moment to explain what it was that you saw that led you to believe [180] that you had found the site where the Monster Muleys photograph of Ronnie Fisher and DL Singer standing over a dead elk was taken.

A. In the picture from Monster Muleys, I could tell it was kind of toward the top of a hillside, just because there wasn't any trees or anything behind it. So walking, would have been southwest, just a little ways from where we found Clayvin's bull, I noticed this bare tree here. And when I started looking at it closely, I could see some of the bark had fallen off it, but this bark piece and that bark piece still remained. There was kind of a little like zigzag in the bark. Upon this picture, we were able to find that piece of bark essentially next to this one. And then you can see there's kind of an odd branch and kind of a bare spot in a tree. We were able to discover the odd branch and the bare spot from that spot.

Q. All right. Can you show the photos of the remains and where you observed the tool marks -- identify the remains and where you saw the tool marks when you examined those remains up closely.

A. So from where I took the comparison photograph, if I would have turned around and looked on the ground, essentially this is what I found, the spinal column and pelvis of an elk. When I took a hard look at it, you could see knife marks or tool marks on the vertebra.

[181] Q. Okay. Thank you.

The -- State's Exhibit 14. Please take a minute to go through that and then tell me what that is. Tell me if you recognize it.

A. Yes. This is, essentially, the picture of Colton, Jr. holding that elk head from Monster Muleys, and then comparison photograph from where we believed he was standing when this photograph was taken.

Q. All right. And those are photographs either you or Scott Adell took in the field, the second photograph?

A. Yes.

Q. And what happened -- what happened -- what -- what are -- what are -- those are photographs 1 and 2. What are photographs 3 and 4?

A. Photographs 3 and 4 are just the photograph of Colton, Jr. with the bull elk head with arrows kind of identifying unique characteristics. Page 4 is the photograph that I took with arrows, indicating those same unique characteristics.

Q. The -- what are photographs 5, 6 and 7?

A. Photographs 5, 6 and 7, when we -- we couldn't find -- just due to the deep snow, we couldn't find where that elk had been -- we couldn't determine where that elk carcass was at. We kind of had an idea just based on the topography, but it was probably under a snowbank. So I [182] waited until June 2nd and hiked back into the area and was able to find a carcass, oh, within 60 yards of where that photograph was taken of --

Q. And can you see what you found on June 2nd in photographs 5 and 6?

A. Yeah. It's the spine and pelvis and some ribs.

Q. And what's the photograph in -- in State's Exhibit 7?

A. On 7, on one of the ribs, I could see tool marks indicating that a tool had been used -- you know, a knife, more than likely -- on the ribs.

MR. LAROSA: All right. State would move the admission of State's Exhibit 14.

MS. GRAY: No objection.

THE COURT: 14's admitted.

(State's Exhibit No. 14 received in evidence.)

Q. (BY MR. LAROSA) All right. And could you go to pages 3 and 4, the ones with the arrows -- they're like 1 and 2, except with the arrows. Hold that up for the jury and just run through what it was, while they can see -- see it to some degree, at least -- and what it was that led you to believe that you had found that site.

A. This was essentially the photograph that -- that led me to find the site where these elk were killed. [183] Looking back at the topography, you can kind of see the end of a kind of a bald ridge. The end of the bald ridge is right here in this photograph. It kind of flattens out, and another kind of bald strip starts in the background where you can see on this hill. It's the same, I guess, hillside from -- from both photographs.

I added arrows to show there's kind of a stumpy black burned-out limb on this tree right here. The same stumpy black limb is on this tree. This tree's kind of got some weird -- the bark fell off. It kind of left a unique design on this tree right here. You can see that it's the same tree.

This is kind of a unique fork in the tree. There's the same unique fork. This is kind of a weirdlooking burned-out tree that kind of comes up and splits. And this photograph you can see it comes up and splits.

Q. All right. Thank you.

The -- what do you do when -- what -- the remains that you found, I understand that last remains was found on June 2nd. The others on May 19. When -- what do you do when you seize that evidence?

A. First thing I did was set my GPS down where the remains were found and took a waypoint on my GPS. They were also photographed.

[184] Q. Why do you do that?

A. We do that so you can determine its location.

Q. Okay.

A. So we GPS'd them. We photographed them. They were collected. And each individual item that was collected at the scene was assigned a seizure tag specific to that item.

Q. All right. That item number is on the tag itself?

A. That's correct.

Q. What other information did you put on that tag?

A. On the tag itself, I write the time and date that it was collected, the case number, and then I write down where it was found at, which is the UTM recording from my GPS, as well as kind of a basic kind of generic Eskimo Creek. Below that I write down in the description exactly what it was that I collected, and then I sign my name to it.

Q. All right. Did you do it -- so how many -- how many separate remains were in total collected from the three sites?

A. Three.

Q. Okay. The -- and they each were given a unique number?

A. Yes.

Q. All right. And you preserved the location of [185] each?

A. Yes.

Q. The -- okay.

THE COURT: Counsel, I think this might be a good time for us to just take a few-minutes break. It's --

MR. LAROSA: That would be great.

THE COURT: Let's do that. Let's take a -- about a 15 -- well, we'll be back -- try to be back in here by 3:15. But we'll take a break.

All right. The jury's out so we'll be in recess until about 3:15.

(Recorded trial proceedings recessed
2:59 p.m. to 3:16 p.m.)

THE COURT: Bring the jury in, please.

All right. The jury is back. Everybody please be seated.

And we'll resume the testimony of Warden Shorma.

And you are still under oath.

Q. (BY MR. LAROSA) Okay. Where we left off, Warden, you basically said you took the time to

identify and preserve the GPS coordinates for location purposes of the three remains; is that correct?

A. That's correct.

Q. The -- and you're doing this when you're [186] standing out there at those locations, correct?

A. That's correct.

Q. All right. The -- and how far away -- and -- and as the crow flies, how far away is this location from the state line?

MS. GRAY: Your Honor, I object. Lack of foundation.

MR. LAROSA: I can lay some foundation.

THE COURT: Sustained.

Q. (BY MR. LAROSA) In this vicinity -- have you spent time in this vicinity?

A. Yes.

Q. All right. And the -- is there a road anywhere in this vicinity?

A. There is. The Marble Quarry Road.

Q. All right. And how, basically, close -- and does the road cross onto the Crow Reservation?

A. Yes.

Q. The -- and is there a fence in that location --

A. Yes.

Q. -- leading -- and does the road run north-south?

A. The road runs more southwest to northeast.

Q. Okay. And if you follow that road from the Crow Reservation and you come into Wyoming, the --

the -- how close do you actually get to the site where these kills [187] happen?

A. Oh, it's about a mile.

Q. Via -- all right. And the -- is there a fence in this vicinity?

A. Yes.

Q. The -- and running -- and is there any interruption in the fence in this vicinity of Hunt Area 38 --

MS. GRAY: Your Honor.

Q. (BY MR. LAROSA) -- other than the gap in the Marble Quarry Road?

MS. GRAY: I'm going to object to the leading nature of these questions.

THE COURT: I'm going to overrule for basis as a foundation.

MS. GRAY: I'm sorry. Could I have that last question -- is it possible to have the questions read back?

THE COURT: No. We'll just have to have him --

Q. (BY MR. LAROSA) Is there any -- where the Marble Quarry Road is, is there -- is there a fence running in both directions away from the road?

A. Yes.

Q. All right. And is that fence interrupted in [188] that -- in -- in say that mile -- in a mile area, anywhere other than where that road is?

A. No.

Q. Okay. The -- and what else -- and can you, from the sites where you believe you found where those photos were taken, can you see that fence?

A. No.

Q. All right. In the course of this investigation, did you walk that fence line?

A. Yes.

Q. All right. And did you -- is there anyplace along that fence line where you can kind of see the ridge above -- the area that you have described on sites that you found, which is the ridge above Eskimo Creek?

A. Yes.

Q. Did you take a photograph of the perspective one has standing at that location?

A. I did.

Q. All right. And does that give just any kind of sense of just kind of how far away it is from the fence?

A. It does.

Q. I'll show you State's Exhibit 15. You know what I'm showing you?

A. Yes.

Q. All right. What is that?

[189] A. It's a picture looking south from the fence on the state line.

MS. GRAY: Excuse me. Is that 15 or 16?

MR. LAROSA: That would be 15.

THE COURT: 15.

MS. GRAY: Do I have them out of order?

MR. LAROSA: You do have them out of order. That's 15.

Q. (BY MR. LAROSA) All right. I'm now going to show you State's Number 16.

MR. LAROSA: I move the admission of State's Number 15 at this time.

THE COURT: Any objections?

MS. GRAY: Your Honor, (unintelligible)?

THE COURT: Yes.

MS. GRAY: No objection, Your Honor.

THE COURT: Okay.

Q. (BY MR. LAROSA) Can you just hold it up to the jury. Give them a sense of basically where the ridge above Eskimo Creek is in that photo.

A. This is -- oops. So this is from the state line. This would be looking north. This drainage over here is Eskimo Creek. This is ridge above Eskimo Creek where the carcasses were located. I don't know if you can see it, but there's kind of a light spot in the [190] trees. That's -- it's burnt trees that you're looking at there. That would have been where the elk carcasses were located.

THE COURT: And, by the way, 15 is admitted.

(State's Exhibit No. 15 received in evidence.)

Q. (BY MR. LAROSA) All right. And you have Exhibit 16 in front of you now.

A. Yes.

Q. Do you recognize what that is?

A. Yes.

Q. And did you take that photo yourself?

A. Yes.

Q. All right. And what is -- what does that photo show?

A. That is a picture from the Marble Quarry Road showing the fence on the state line from Montana looking towards Wyoming.

MS. GRAY: And I object, Your Honor. There's been no foundation laid to show that is the state line. Just no foundation laid to show what the fence marks.

THE COURT: All right. I'll sustain that just so we can lay some foundation.

[191] Q. (BY MR. LAROSA) All right. The -- you said you've been a warden for 18 years.

A. Yes.

Q. And you've been -- you spend time in the field, correct?

A. Yes.

Q. In the time that you've done that, have you become familiar with border markings?

A. Yes.

Q. All right. What are border markings?

A. Border markings are essentially posts that are put out by the National Geodetic Survey, or the USGS, that essentially identify boundaries.

Q. All right. And can you recognize a boundary marker when you see one?

A. Yes.

Q. All right. And what kind of shape do they usually take?

A. They're circular with a brass cap. They stamp numbers in, identifying essentially what you're looking at.

Q. All right. And if the boundary is the state line, what kind of information's on that boundary to indicate that what's being marked is a state line -- state border demarcation?

[192] A. Depending on how the state line goes through the marker, it will stamp the initials of each state on that side of the marker.

Q. Okay. And -- and -- all right. At the gap in the fence of the Marble Quarry Road, is there a border marker?

A. Yes.

Q. Can you see it in that photograph?

A. Yes.

Q. All right. And what does that bound -- what does that border marker mark?

A. It essentially marks the boundary of the Bighorn National Forest and the Wyoming-Montana state line.

Q. All right.

MS. GRAY: And I'm going to object again to lack of foundation for -- may I ask -- may I voir dire this witness?

THE COURT: Um, as to?

MS. GRAY: As to the border marker and when they put the fence up and what does Mr. Shorma know about it.

THE COURT: All right. I will allow a limited voir dire on that.

VOIR DIRE EXAMINATION

Q. (BY MS. GRAY) Good afternoon, Warden Shorma.

[193] So can you tell me (unintelligible)?

A. It's that post. That's correct.

Q. Okay.

THE COURT: All right. That was quick. All right. Thank you.

MS. GRAY: No, no. I want to ask some questions, but I just don't want to stand next to him.

THE COURT: You're still going? Okay.

Q. (BY MS. GRAY) So, Mr. Shorma, there's a -- in the photo there's a post that says Wyoming state line. It's not in the same place as the fence; is that correct?

A. That's correct.

Q. Do you know who put that fence up -- that sign up?

A. The Wyoming state line signs?

Q. Yes.

A. I did.

Q. You put it up?

A. I did.

Q. You put it behind the fence?

A. I put it on the Wyoming side of the fence.

Q. Okay. So how about the fence? Do you know who put the fence up?

A. The fence is maintained by the permittee that has that grazing permit.

[194] Q. Okay. Let's -- let's back up first. I didn't ask who maintains it. Who put it up originally?

A. I don't know.

Q. And a permittee for whom?

A. As far as --

Q. Well, you said it was maintained by the permittee.

A. Oh, the grazing permittee on the forest. That and the landowner who maintains the fence.

Q. Okay. So if I'm understanding you correctly, this land here where you put up -- this -- this sign that says Wyoming, that's in the Bighorn National Forest, correct?

A. That's correct.

Q. Okay. And who is the owner of the Bighorn National Forest?

A. Everybody.

Q. All right. Let's take that back a little bit. Who is the owner in fee simple of the land that is the United States forest with the name Bighorn National Forest?

A. I guess it to be the citizens of the United States.

Q. Is it the United States -- is it the United States Forest Service?

[195] A. The Forest Service manages it, yes.

Q. Okay. And so do you -- well, let me ask this question this way. Do you have any training in surveying?

A. No.

Q. Do you have any training in the law?

A. No.

Q. Do you know how the United States government owns government facilities?

A. No.

Q. Do you know -- do you have any training in how grazing permits are let or acquired?

A. Some.

Q. Okay. Under Wyoming or federal law?

A. Be federal.

Q. Okay. And is a -- a -- to your understanding, is a person who has a grazing permit a federal employee?

A. No.

THE COURT: All right. I think we're getting outside the scope of --

MS. GRAY: Let me -- let me finish one more thing.

Q. (BY MS. GRAY) So do you know who put up this fence?

MR. LAROSA: Objection. Asked and answered.

[196] MS. GRAY: You're probably right.

THE COURT: Sustained.

MS. GRAY: Okay. I'm going to renew my foundation objection, Your Honor. I don't think Mr. Shorma has been able to identify that the fence, what it marks, who put it up, and whether who put it up had authority to put it up.

THE COURT: All right. Your objection is sustained -- overruled. I'm sorry.

You may proceed, Mr. LaRosa.

DIRECT EXAMINATION (CONTINUED)

Q. (BY MR. LAROSA) What state is the Bighorn National Forest in?

A. Wyoming.

Q. I'll show you State's Exhibit 17. You said that there's a marker at the -- demarcating the boundary between Montana and Wyoming at the fence -- at the gap in the Marble Quarry Road. Do you recognize what State's Exhibit 17 is?

A. Yes.

Q. What is that?

A. It is the boundary marker at the top of that cap.

Q. All right. And is it -- does the photograph lead the -- are the -- is what's written on the top of

[197] that marker legible?

A. Yes.

Q. All right. And does it make clear which side of the pin is Montana and which side is Wyoming?

A. Yes.

MR. LAROSA: All right. And the State would move the admission of Exhibits 15, 16 and 17 at this time.

MS. GRAY: Which numbers?

MR. LAROSA: 15, 16, 17.

MS. GRAY: We had no objection to 15.

We object to 16, Your Honor, on the grounds there's been no foundation laid that this marking, as it appears the road has anything to do with the incident. There's been no testimony given that the --

Mr. Herrera or any of the other alleged hunters were anywhere near this road.

THE COURT: Mr. LaRosa?

MR. LAROSA: The evidence so far has indicated the testimony of the three sites where remains were found were a mile from the border of Wyoming. And these exhibits establish a location of the border in the vicinity.

THE COURT: All right. Your objection is overruled, and 16 is admitted.

[198] (State's Exhibit No. 16 received in evidence.)

THE COURT: What about 17?

MS. GRAY: I just want to make sure I have them in order. Is this 17 is this one?

MR. LAROSA: Yes. 16. 17.

MS. GRAY: 17. Okay. No objection to 17, Your Honor.

THE COURT: All right. 17 is admitted.

(State's Exhibit No. 17 received in evidence.)

MS. GRAY: This is 15?

MR. LAROSA: I haven't done that yet.

MS. GRAY: Oh. This one. Well, we did not object to 15. We do not object to --

THE COURT: 17.

MS. GRAY: -- 17. We do not object to this one here. Is that --

MR. LAROSA: I haven't showed that one.

MS. GRAY: You haven't showed that one yet. Okay.

We continue our objection to 16.

THE COURT: All right. Over your objection I am admitting 16. So 15, 16 and 17 are admitted.

Q. (BY MR. LAROSA) Could you please show State's [199] Exhibit 16 to the jury so they can see the Marble Quarry Road and the fence to that location.

And can you further identify where the boundary marker is in that photograph?

A. Boundary marker's right here next to the brace.

Q. How removed from the fence is the location from that boundary marker?

A. It's directly underneath the brace.

Q. Okay. Can you please hold up State's Exhibit 17 and show the jury what the top of that boundary marker looks like.

Can you identify where it says Wyoming and where it says Montana?

A. Yes. Up at the top here, this is looking directly down on it. The side where it says Montana, the side south says Wyoming.

Q. Okay. And what is the forest preserve? Do you know is that a -- did that -- how many boundary markers do you believe you see in the course of being a game warden?

A. Probably --

Q. Is that a new one or an old one?

A. This is an old one.

Q. Okay. If you are -- you said the road runs southwest, correct?

A. Correct.

[200] Q. So if you run in a -- in a westerly direction along the fence line, do you encounter any other boundary markers?

A. Yes.

Q. What do you encounter and how far removed?

A. From the gate here on the Marble Quarry Road west is probably 250, 300 yards.

Q. All right. And what do you find at that -- what do you find 250 to 300 yards away along the fence line?

A. There's another stamped brass cap that has Montana and Wyoming stamped on it, and there's also a yellow Carsonite post that indicates you're entering Bighorn National Forest.

Q. All right. Now I'm going to show you Exhibits 18 and 19. Let's deal with them in turn. What is State's Exhibit 18?

A. 18 is a picture I took looking west of the Carsonite post indicating the Bighorn National Forest boundary.

Q. Okay. And can you see the boundary marker in that photograph?

A. Yes.

Q. All right. And where is it located with respect to the fence line?

A. It's located directly underneath it.

[201] Q. All right. And what's State's Exhibit 19?

A. 19 is the brass cap at that location.

Q. And does that brass cap likewise demarcate the boundary between Montana and Wyoming?

A. Yes.

Q. And can you see that in that photograph?

A. Yes.

MR. LAROSA: The State would move the admission of State's Exhibit 18 and 19.

THE COURT: Any objection to 18 and 19?

MS. GRAY: The same objection, Your Honor, we had to the last set. We don't think there's foundation laid to -- particularly for the fence. Not so concerned about marking the Bighorn National Forest. So it's more the -- I guess, I'm going to object to 19.

THE COURT: All right. Any response, Mr. LaRosa?

MR. LAROSA: State's Exhibit 19 clearly indicates upon inspection that it's a boundary marker between the two states. The two states being Montana and Wyoming.

THE COURT: All right. The objections are overruled, and 18 and 19 are admitted.

(State's Exhibit Nos. 18 and 19 received in evidence.)

[202] Q. (BY MR. LAROSA) Could you please display Exhibit 18 to the jury and identify what's in the photo.

A. So this is along the fence line looking -- looking west. You can see there's a Carsonite post right here that when you look at it from the Montana side, essentially it says Bighorn National Forest on it. At the very bottom of it, down here in the rocks, there's a brass cap.

Q. All right. Could you show -- display Exhibit 19 for the jury and describe what is on -- what's photographed.

A. So this is the brass cap that's underneath the fence. You can see Wyoming written on one side, Montana written on the other. I'm not quite sure what these numbers mean, but they generally stamp the year it was surveyed on the cap. In this you can see it's '95, right here.

Q. And are these two respective boundary pins that

you see in two locations, are they of a form and type that you have encountered in other location -- other boundary locations?

A. Yes.

Q. The -- is the fence between those two boundary markers uninterrupted?

A. Yes.

[203] Q. How many -- how many points does it take to make a line?

MS. GRAY: Let me object to that. I'm -- uninterrupted for a given length? I'm not certain what that question asks. So I'm going to object as to foundation. I'm not sure what it asks.

THE COURT: All right. Either rephrase the question or lay some foundation, please.

Q. (BY MR. LAROSA) Other than the gap for the Marble Quarry Road, continuing west from there, is there any gap in the fence until you get to the pin in State's Exhibits 18 and 19?

A. No.

Q. Okay. How many points does it take to make a line?

A. Two.

Q. And doing what you do to enforce the laws of Wyoming -- Game & Fish laws of Wyoming as the warden, what do you believe that fence line to be?

A. The state line.

Q. And is that based on the markings?

A. Yes.

Q. Is that based on maps that you've seen?

A. Yes.

Q. Okay. You stated that when you're out in the [204] field on May 19th, and I guess on June 2nd also, you preserved, using GPS technology, the coordinates identified and the location of the remains that you found; is that correct?

A. Yes.

Q. All right. What is Global Positioning -- what does GPS stand for?

A. Global Positioning System.

Q. And what type of GPS equipment did you bring with you to the field?

A. I have two different GPSes that I use. That day I took a Garmin I believe it's a 60CSx.

Q. All right. And why do you use GPS technology to do the job that, do you?

A. Because I -- it's -- it's accurate and I can accurately describe crime scenes with it. I can use it to identify locations of animal species in the county. Settle disputes between --

MS. GRAY: Your Honor, if I could be heard for a moment. So I'm going to object. Mr. Shorma was not identified as an expert and he's now delving into discussions of the accuracy of a particular technology. And we had no notice that (unintelligible) noticed within the 30-day limit that Your Honor set on that in the order -- in the pretrial.

[205] MR. LAROSA: I would say the question that I asked that he was trying to answer was simply telling the jury why he used the technology and what he uses it for.

THE COURT: I'll overrule the objection. He certainly can testify as to his opinion as to why he uses them.

Q. (BY MR. LAROSA) The -- I'm going to ask it again, though, just because you did not finish. What do you use the GPS technology for in doing your job?

A. I use it for law enforcement cases, identifying evidence, identifying locations where animals are killed. I use it for wildlife surveys. If I see a unique or interesting species of wildlife, I want to document that, I use my GPS to show at this place and time I saw this animal. I use it during hunting seasons to resolve conflicts between hunters and landowners to show where they're at and what that land status is. I have people send me coordinates to poaching cases for me to go look at, so I use my GPS to navigate my way to go find these spots. I use it a lot.

Q. The -- are there any other like law enforcement agencies in the state of Wyoming that use it?

A. Yes.

Q. The sheriff's office use it?

A. Yes.

[206] Q. Search and Rescue?

A. Yes.

Q. Forest Service officials?

A. Yes.

Q. The military?

A. Yes.

Q. Okay. Has -- do you have a -- a basic understanding of how it works?

A. Yes.

Q. Can you please explain?

A. Well, essentially there is a system of -- there's 24 different satellites that your actual GPS receiver, when it kind of gets in contact with these satellites, there's three different signals that each satellite sends to the GPS. And based on the triangulation of where the satellites are is in orbit, you can try to manipulate your position on the ground. So as you move, the distance between say Satellite A and me, as I move, the length of time it takes for that signal to come to the satellite to me, my receiver can tell that I'm moving and determine a waypoint based on triangulation.

Q. Okay. And on the date you took your locations, did you have any difficulty communicating with satellites?

A. No.

Q. The -- do you have any training in -- in [207] mapping?

A. Yes.

Q. What type of training do you have?

A. Well, I have -- actually, my college minor's in geography. So I took several mapping classes. But as far as like taking GPS points and putting them on a map, I've taken GPS training to essentially learn how to navigate the handheld device to know how it works and how to take a waypoint and how to transfer that to a computer.

Q. All right. Given your familiarity with the technology and with general principles of mapping, do you need to use a system of plane coordinates when you're creating your map of locations?

A. Yes.

MS. GRAY: And, Your Honor, I'm going to just interpose another objection that this is expert testimony, and it was not disclosed in a timely manner.

THE COURT: Overruled. He's already laid a foundation that he has general knowledge of these things, so he can testify.

Q. (BY MR. LAROSA) All right. In using the GPS technology that you use, do you utilize a particular system of plane coordinates for defining and stating the positions of points on the surface of the ground within the state of Wyoming?

[208] A. Yes. We use a datum that's called NAD 83.

Q. All right. Who developed that system?

A. The National Geodetic Survey.

Q. What is the National Geodetic Survey?

A. They're responsible, essentially, for having like the foundation of finding your position in America. I mean, they're the -- they're a subsection of NOAA, and their, essentially, mission is to make sure you know where you're at and you know your position.

Q. All right. The -- do surveyors utilize them? Their -- the information that they provide in their systems?

A. Yes.

Q. The -- who directed you to use the NAD 83 system developed by the National Geodetic Survey?

A. The Wyoming state legislature actually adopted it as the data set for the state of Wyoming in statute.

Q. All right. Do any other states use the NAD 83 system of plane coordinates?

A. 48 out of 50 do, as well as the federal government.

Q. All right. What's a control marker?

A. Control --

MS. GRAY: Your Honor, object to the term "federal government." I guess there's a lot of agencies in [209] the federal government. So if we can have a little more clarity who he's referring to.

THE COURT: All right. Mr. LaRosa, do you want to --

Q. (BY MR. LAROSA) Federal Aviation Administration?

A. Yes.

Q. Are you aware of any other specific agencies that use it?

A. Military. I would assume that I -- and I'm not sure (unintelligible).

Q. Don't assume.

A. Yeah.

Q. Don't assume.

A. I'm not assuming.

Q. The -- okay. What's a control marker?

A. A control marker is essentially a marker that is set up by the Geodetic Survey that is of an exact location and an exact latitude. And what they can use it for as a control or a baseline or a starting point when a survey is being made. They know exactly where this point is so they can reference that when they're surveying.

Q. Okay. And is there one in the area close to this fence that we have identified?

A. Yes.

[210] Q. All right. How far removed from that fence?

A. .1 miles.

Q. All right. And is it on the Montana or Wyoming side of the line?

A. It's on the Wyoming side of the line.

Q. All right. And does the National Geodetic Survey --

MR. LAROSA: Actually, at this time I'm going to ask the Court to take judicial notice of the fact that the legal boundary between the state of Wyoming and the

state of Montana and the Crow Reservation is the 45th north latitude.

THE COURT: And the Court does take judicial notice of that fact. And I will instruct the jury as follows: The Court has the power to take judicial notice of certain facts and events. This means that that fact is taken as true without the offering of proof at trial. However, a party is not prevented from disputing the judicially noticed fact by contrary evidence. You, the jury, have the duty of deciding all questions of fact. Therefore, you may either regard the judicially noticed fact as true, or if the evidence is -- the evidence so indicates, you may regard the fact as not true.

Q. (BY MR. LAROSA) All right. Does the National Geodetic Survey -- actually, do you know where the [211] marker -- can you find that marker yourself?

A. I know where it's at, but I've never been to it.

Q. The -- but you know its general location?

A. Yes.

Q. You could identify its approximate location on the map?

A. Yes.

Q. Okay. And does the National Geodetic Survey essentially make available in latitude and longitude coordinates the locations of their markers?

A. Yes.

Q. And do they make that available to the general public?

A. Yes.

Q. And how do you get that information from the National Geodetic Survey?

A. You go to their website.

Q. All right. And can you get it there?

A. Yes.

Q. All right. And have you obtained the data for the control marker that's in Hunt Area 38?

A. Yes.

Q. All right. Show you State's Exhibit 20 now. Do you recognize what I'm showing you? What is State's Exhibit 20?

[212] A. This exhibit is the National Geodetic Survey position of that marker.

Q. In other words, on that page can you actually see the coordinates of the marker that's located in Hunt Area 38?

A. Yes.

Q. All right. And are those coordinates south of the 45th parallel?

A. Yes.

Q. And can you see that -- is that highlighted on that page?

A. Yes.

MR. LAROSA: State would move its admission.

THE COURT: Any objection to Exhibit 20?

MS. GRAY: May I ask one question of the witness, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

Q. (BY MS. GRAY) Mr. Shorma, south of the 45th parallel as measured by this data set?

A. By this data set?

Q. Yes.

A. By the NAD 83 data set?

Q. Yes. Is that what you mean when you --

[213] A. Yes, yes.

MS. GRAY: No objection.

THE COURT: All right. 20 is admitted.

(State's Exhibit No. 20 received in evidence.)

DIRECT EXAMINATION (CONTINUED)

Q. (BY MR. LAROSA) Can you read those coordinates for the jury for that control marker?

A. Yes. Using NAD 83, the position of that survey control marker is 44 degrees, 59 minutes, 57.21924 seconds north, 107 degrees, 42 minutes, 35.48694 seconds west.

Q. Do you know how to work with information like that?

A. Yes.

Q. Okay. The -- the -- I'm not going to ask you if you remember that string of latitude and longitude numbers, but the three kill sites for whom you took coordinates -- in fact, the -- what system do you use to preserve numerically the -- a location?

A. I use UTMs, which is Universal Transverse Mercator.

Q. Is that something that's different than latitude and longitude?

A. Yes.

Q. All right. Is that a -- is that a -- an older [214] form of measurement or a newer form of measurement?

A. Newer.

Q. All right. Does this newer form of location measurement have a -- a -- is there a reason why you use UTM?

A. It's easier to use and it's more accurate.

Q. In what way is it easier to use?

A. It's easier to use --

MS. GRAY: Your Honor, I'm just going to interpose another objection in terms of that's expert testimony as to the accuracy of the UTM and it's more accurate than other systems. And, again, this was not given to us within 30 days.

THE COURT: It's overruled. I think he probably could just phrase it within his opinion it's easier to use or he believes it's easier to use. It's his opinion testimony so you're overruled.

Q. (BY MR. LAROSA) What kind of training did you actually get to learn how to use the UTM system and to learn the purposes for which it's designed?

A. I've had GPS training offered by the Game & Fish, as well as college courses I took on mapping and mapping software and GPSes.

Q. Does that training allow you to understand what the -- what the numerical system means when you see it?

[215] A. Yes.

Q. All right. And does it allow you to see and calculate the distance between two different points whose location is phrased using UTM?

A. Yes.

Q. All right. And what is it that -- what's easier about it to use?

A. Like latitude and longitude uses degrees, minutes, seconds. A UTM number, it's based off of a square meter. So my UTM point to the wall is only -- if the number's off by 10, it's 10 meters away. I don't have to try to convert the decimal points into seconds to try to identify how different it is. How far away it is. I can just tell you.

Q. Okay. The -- who else uses UTM in the state of Wyoming at least?

A. Most -- I'd say it's a mix. Some counties and other state agencies still use lat/lon, some still use UTM. It's an equal mix.

Q. Okay. The -- is there an ability to convert from one expression of a location using the UTM system to that location using the specification of latitude, longitude and degrees?

A. Yes.

Q. All right. And -- and in this case, did you do [216] that conversion?

A. Yes.

Q. And how did you do that conversion?

A. There's two different ways that I did it. The first way is there's -- I went to Montana State University, has a unique system website where you can convert UTMs to latitude and longitude. The

easier way to do it is when you have your GPS and you take a waypoint -- it doesn't matter -- when you take a waypoint, you take a waypoint you can scroll through the different data sets to decide how you want that information expressed. You want that information expressed in the UTM, the GPS will convert to UTM. If you want it expressed in latitude/longitude, it will convert and have it expressed as latitude/longitude.

Q. All right. And when you -- so you said you did the conversion two different ways. The -- in both ways, did the -- was the lat -- was the location of these three sites south of the 45th north latitude or 45th parallel?

A. Yes.

Q. By approximately how much?

A. A mile.

Q. You have stated you have some training in mapping. And do you use -- and you said, I believe, you use mapping when you do your job.

[217] A. Yes.

Q. Did you use mapping in this case to preserve evidence of where you found these kill sites?

A. Yes.

Q. All right. And -- and what mapping technology did you use to do that?

A. I took my coordinates off my GPS and put them on Google Earth.

Q. All right. And what is Google Earth?

A. Google Earth is -- essentially, it's a -- it's -- it's essentially a satellite imagery of the earth that anybody can download onto their computer and look at to determine locations that are distances, or --

Q. Is it like frozen in time or does it change?

A. It's continuously updated by satellite imagery. As they get new satellite imagery, they'll lay it on the old to essentially keep it as current as they can.

Q. If you go to -- if you use Google Earth, can you put in a -- basically using a set of coordinates, can you put in a location and Google Earth will generate the -- the terrain at that approximate location?

A. Yes.

Q. This will allow to you scale in and out as you desire?

A. Yes.

[218] Q. Does Google Earth have within its system knowledge of border lines?

A. Yes.

Q. And how do you know that?

A. Because I've seen them on Google Earth. I've compared them to known points that I've observed in the field.

Q. The -- so if -- if you go to Hunt Area 38 and you use Google Earth, will you generate a map from Google Earth that shows a portion of Hunt Area 38 and where Google Earth places the border?

A. Yes.

Q. All right. The -- and -- okay. I'm going to show you State's Exhibit 21. And who uses Google Earth? Are you the only person at Game & Fish that uses Google Earth, or who else uses it?

A. Everybody uses Google Earth.

Q. Right. The -- and that -- all right. What about other law enforcement agencies?

A. Yeah. The sheriff's office I know uses Google Earth. I know the Forest Service uses Google Earth as well as (unintelligible) photos.

Q. Okay. The -- what is State's Exhibit 21?

A. State's Exhibit 21 is a Google Earth essentially map that I generated by platting the GPS locations I [219] recovered from the field onto Google Earth.

Q. Can you -- so if you generate a map on Google Earth and it contains the area where you identified the location, if you -- can you put the coordinates in?

A. Yes.

Q. And will Google Earth then locate them on the map that it generates?

A. Yes.

Q. All right. And did you do that in this case?

A. Yes.

Q. All right. Now, you can -- you've been to the sites where you took the coordinates, right?

A. Yes.

Q. You're familiar -- are you familiar with the terrain in this area?

A. Yes.

Q. So are you familiar with the terrain shown in the full expanse of that photograph?

A. Yes.

Q. And does Google Earth appear to have placed, to you, the kill sites where you were actually standing when you took those coordinates?

A. Yes.

Q. All right. And does that photograph of -- of Google Earth, does it accurately portray that area of Hunt [220] Area 38, its topography and defining features?

A. Yes.

Q. All right. And can you see the state border line generated on that map?

A. Yes.

Q. All right. And --

MS. GRAY: Your Honor, I'm going to object here. May I ask the witness a question?

THE COURT: Yes.

VOIR DIRE EXAMINATION

Q. (BY MS. GRAY) Mr. Shorma, who puts the white line on the photo? Do you put that on manually or is it something that Google Earth does on its own?

A. Google Earth does it on its own.

MS. GRAY: Thank you.

Your Honor, we object. It's hearsay, it's -- well, I guess I'll wait until they offer it (unintelligible).

THE COURT: Mr. LaRosa.

DIRECT EXAMINATION (CONTINUED)

Q. (BY MR. LAROSA) The -- can you see the Marble Quarry Road in that photograph?

A. Yes.

Q. Can you basically -- and can you -- you know, do you recognize sort of where the line drawn by

Google, as [221] the border line crosses that Marble Quarry Road?

A. Yes.

Q. And does that Google map contain the area where you found both of those markers?

A. Yes.

Q. All right. And does the line drawn by Google appear to match the fence line running between those two barbs?

A. Yes.

Q. Those two boundaries.

A. Yes.

MR. LAROSA: State would move the admission of State's Exhibit 21.

MS. GRAY: Your Honor, our objection, is Your Honor, that if Google is going to testify in this courtroom, someone from Google should come and testify. We believe it's hearsay. I'm not sure the authentication has been put in. And our most -- our pressing objection is it's a violation of the (unintelligible).

THE COURT: Mr. LaRosa.

MR. LAROSA: I just want to be clear. If the objection is a hearsay objection, the State would submit that there is no declarant here. There is no assertion being made by any out-of-court person. Hearsay is something that does not apply to systems or processes. [222] And the map that's generated here is the result of technology operating according to code. And it's not hearsay if there's no declarant, and there is no declarant here.

If the issue is authentication, we would meet that if simply offered enough to show what it was, what it purports to be. He's testified that it matches the fence line and appears to put the border exactly where he found the boundary fence, and we believe that is sufficient.

THE COURT: The objection is overruled. It's admitted.

(State's Exhibit No. 21 received in evidence.)

Q. (BY MR. LAROSA) All right. Will you please just, I guess, hold that up. Actually, no. Wait. The -- I'm going to show State's Exhibits 22 and 23.

The -- do you recognize what those exhibits are?

A. Yes.

Q. Were those exhibits likewise generated using Google Earth?

A. Yes.

Q. Do they contain information that you added to -- and are they -- do they portray the same -- same area as exhibits -- State's Exhibit 21?

A. Yes.

[223] Q. All right. What is the difference with respect to State's Exhibit 22?

A. 22 essentially has a line essentially drawn the shortest distance between state line and the sites where these animals were killed with the approximate distance of a mile. It also labels the Eskimo Creek Drainage, the states of Montana, Wyoming, as well as the Marble Quarry Road.

Q. All right. Let me ask you a question about -- when you did this calculation of the distance to the state line, how did you do it?

A. Google has a tool on Google Earth, a distance tool, that you can measure in about any unit that you like. I just put one pin on where I knew the state marker was at the fence and pulled it out to where the -- the kill sites were.

Q. Okay. The -- and the -- you mentioned before the shortest distance. What do you mean by the shortest distance?

A. Well the -- this picture's kind of at an angle, so it looks like the -- the line from the -- I guess since this is sitting at an angle, that this line of distance is an angle because that is the shortest distance between the known marker at the state line and where these -- where animal --

[224] Q. All right. Does the line that you placed on that essentially kind of match the angle of measurement that you took?

A. Yes.

Q. All right. Did you -- when Google generated its own map of that area, does it put the name of the road down on it?

A. No.

Q. What have you done in State's Exhibit 22? Have you identified any other features?

A. Yes. I identified the feature of Eskimo Creek, the location of Montana, Wyoming and the Marble Quarry Road.

Q. Okay. The -- and are the kill -- are the --

MR. LAROSA: State would move the admission of State's Exhibit 22.

THE COURT: Any objection on 22?

MS. GRAY: The same objection to be made to (unintelligible), Your Honor.

THE COURT: All right. And that objection is overruled and 22 is admitted.

(State's Exhibit No. 22 received in evidence.)

Q. (BY MR. LAROSA) All right. And what's State's Exhibit 23, Mr. Shorma?

[225] A. 23 is the same map as 21 and 22. I added the position of the state line sign, the Forest Service marker, as well as how the fence line runs along the state line.

Q. All right. And so where you draw that in, can the jury see where it -- in any location as to the actual physical -- where the physical fence in any way departs from the boundary line drawn by Google?

A. Yes.

Q. All right. And -- and in State's Exhibit 22 again, can the jury see approximate -- the approximate location of the two boundary markers that you found and photographed in that area?

A. Yes.

Q. All right. And you testified earlier, we admitted as State's exhibit, it shows some perspective from the fence line looking in the general direction of the ridge above Eskimo Creek. Is that likewise identified on location by that map?

A. Yes.

Q. And so can the jury appreciate where these things are if -- if they look at State's Exhibit 23?

A. Yes.

MR. LAROSA: State would move its [226] admission.

MS. GRAY: Same objection, Your Honor.

THE COURT: The objection is overruled. 23 is admitted.

(State's Exhibit No. 23 received in evidence.)

Q. (BY MR. LAROSA) Can maps be hard to read if they're small?

A. Yes.

Q. All right.

MS. GRAY: Are they demonstrative?

MR. LAROSA: Demonstrative.

Q. (BY MR. LAROSA) Do you think it would be helpful to explain where these things were if the jury -- if the jury could see things blown up a little bigger?

A. Yes.

Q. Okay. What's State's Exhibit 24?

A. 24 is a blown-up version of State's Exhibit 22.

MR. LAROSA: All right. State would offer it -- its admission for demonstrative purposes.

MS. GRAY: And as to the demonstrative, no objection, Your Honor.

THE COURT: All right. It's admitted for demonstrative purposes.

(State's Exhibit No. 24 [227] received in evidence.)

Q. (BY MR. LAROSA) All right. Let's please identify for the jury, if you could, where stuff is on this map. Where's the border drawn at?

A. Google Earth draws the border in as being this light kind of grayish-blue line that runs across the edge.

Q. All right. And we mentioned before that kill sites are on the ridge above Eskimo Creek. Where is Eskimo Creek?

A. This drainage right here is Eskimo Creek.

Q. All right. And you mentioned before that there's a gap in the state line where Marble Quarry goes across the state of Montana into Wyoming. Where is Marble Quarry Road on this map where it crosses the state line?

A. The Marble Quarry Road is this road right here, and it crosses the state line in this little -- kind of little valley right here.

Q. All right. Where is the ridge above Eskimo Creek?

A. This would be the ridge above Eskimo Creek. There's kind of just a -- like a head of Eskimo Creek. It kind of drops off the backside into the west fork of the Little Horn. So all this kind of timbered ridge right here is the ridge above Eskimo Creek.

Q. All right. Now, there are four green balloons [228] with identifying language in the area of Eskimo Creek. Will you please explain what these markings are.

A. Where I have marked Clayvin site, this is the GPS waypoint that I took when I found the pelvis and the kill site based on the Monster Muleys photograph.

Ronnie's site is the GPS location I took finding the pelvis, as well as -- essentially when we compared the photos of Ronnie and DL from Monster Muleys to what we found in the field, this would be the GPS waypoint for that -- where that elk died.

The Colton site, when I went back on June 2nd, when the snow had melted, I was able to find that other elk rib cage and pelvis. That was the appropriate position where we found that. That's a GPS location where those were discovered.

This says unclaimed bull. There was another bull found dead at this location that had nothing taken off of it.

Q. Okay. The -- and does this line approximate the sort of -- where it kind of happened?

A. Yeah. This is -- from the state line to where these are at, the shortest distance is at this angle.

Q. Okay. And I'll show you State's Exhibit 25. Do you know what that is?

A. Yes.

[229] Q. What is that?

A. It is essentially a blown-up version of State's Exhibit 23.

Q. All right. And is it easier to see features on it in this size?

A. Yes.

MR. LAROSA: State would move its admission for demonstrative purposes only.

MS. GRAY: No objection as to demonstrative, Your Honor.

THE COURT: It's admitted for demonstrative purposes.

(State's Exhibit No. 25 received in evidence.)

Q. (BY MR. LAROSA) Okay. The -- are the same four sites, the Clayvin site, the Ronnie site, the Colton site and the unclaimed bull site also located in the same location?

A. Yes.

Q. The -- all right. What do we have here? Please explain to the jury what else has been placed on this map.

A. I placed -- from the earlier exhibit that shows -- I guess it would be Exhibit 18 -- that shows the U.S. Forest Service sign as well as Exhibit 19, that shows the brass cap underneath it. That was found on this ridge [230] to the west of where the Marble Quarry Road enters Wyoming.

From Exhibit 16, that shows the location of where the -- the -- the state of Wyoming sign and the brass forest cap are at are there at this X. The photograph that I took from the state line looking up drainage into Eskimo Creek is signified by this blue X as a photographic location.

This red line, it goes across the face, this is actually how the fence runs. I've walked it, so I -- I marked this location on this map as well.

Q. The -- okay. So can the jury see where the Google boundary diverges from the actual boundary, the line on (unintelligible)?

A. Yes. There's -- you can see it runs right with it right here. The fence has a little jog over here on the other side of Dry Ridge here. But otherwise in the area between the Marble Quarry Road and Eskimo Creek, it's right on.

Q. Okay. You've been to this area. You collected remains of this area. You mentioned that the -- the Eskimo Creek is kind of -- I don't remember your exact words, but somewhat of a ravine at points.

A. Yes.

Q. The -- if you were carrying -- you yourself were [231] carrying any substantial amount of weight off the area where you found these kill sites, what would be the least onerous way out?

A. Well, as -- as Eskimo Creek goes down -- as the water runs down Eskimo Creek down into Montana, the ravine gets steeper and deeper. Personally, if I had killed an elk, where these elk were found, the easiest way to get them out of the -- to get them out of here would be to drag them across over by the Marble Quarry Road and go down by the bottom. Because down here it's just deep and rocky and nasty.

Q. And if you -- if you took that route, would you generally follow Marble Quarry Road?

A. Yes.

Q. And if you crossed into Montana along that road, would you go through -- would you go past the state line sign that you posted?

A. Yes.

Q. Okay. After May 19th and June 2nd, what further investigation did you do?

A. Well, we needed to -- to contact the individuals that we believed were responsible. We also -- being that we had found evidence on Facebook, we served warrants on Clayvin Herrera, Ronnie Fisher and DL Singer's Facebook pages.

[232] Q. All right. And -- and when approximately -- during what period of time did you engage in that type of investigative work?

A. It would have been towards the end of June.

Q. All right. Were those -- were those search warrants -- your authority to conduct those search warrants granted by a judge?

A. Yes.

Q. And was -- were they subsequently executed by contacting Facebook?

A. Yes.

Q. And did Facebook provide the requested material?

A. Yes.

Q. And did that material include materials saved by Facebook covering the period of January 2014?

A. Yes.

Q. Okay. The -- and did you examine that material yourself?

A. Yes.

Q. All right. And did the photographs on -- in State's Exhibits 12, 13 and 14, the Monster Muleys photographs -- the photographs on Ronnie Fisher's -- that you saw on April 26 on Ronnie Fisher's Facebook post, that set, I believe, is portrayed in State's Exhibit

10, were those photographs supplied as part of that return?

[233] A. Yes.

Q. All right. And, likewise, the discussion postings, were they likewise provided?

A. Yes.

Q. And were these photos in State's Exhibit 11 excerpted from DL Singer's Facebook page in April, were those likewise provided to you by Facebook?

A. Yes.

Q. Okay. You mentioned that -- is it logical -- when you get this sort of information that you had in this case, you generally attempt to make contact with people who are the focus of your investigation?

A. Yes.

Q. That's standard practice?

A. Yes.

Q. All right. And, basically, by the time all the stuff that you've discussed is done, basically who are the people that you wanted to talk to?

A. We wanted to talk to Clayvin Herrera, Ronnie Fisher, DL Singer and Colton Herrera.

Q. All right. Did you decide to attempt those contacts?

A. Yes.

Q. Who did you attempt to contact first? Who did you decide to contact first?

[234] A. Clayvin Herrera.

Q. All right. And approximately when did you begin to attempt to contact him?

A. I believe it was at the end of July I sent him an email asking him if he'd want to meet along the state line.

Q. Did he respond to the email?

A. He did.

Q. Did he -- did he agree to meet you at that time?

A. No.

Q. Did you make any further attempt?

A. I think I sent him a -- if I recall, I sent another email to him, and I don't think he responded to that one.

Q. All right. What happened after those two things happened?

A. Well --

Q. And where did you want to meet him when you tried to set up a meeting?

A. We were hoping to meet him in Wyoming.

Q. Okay. All right. Were you able to get that done?

A. No.

Q. What happened after you were unable to set up a meeting with Wyoming? What happened?

[235] A. Well, it was back -- we had to go kind of back to the drawing board on how we thought it would be best to approach, you know, interviewing Clayvin. So we essentially enlisted the help of the BIA, Bureau of Indian Affairs, to help us with that.

Q. All right. Where is the BIA -- office of the BIA that you contacted?

A. The BIA tribal police, they have an office in Crow Agency. We attempted to meet him there by

having essentially Jose Figueroa, the police chief, make contact with him and make a meeting.

Q. Was a date for a meeting scheduled as a result of those -- those contacts and requests?

A. Yes. September 11th.

Q. All right. And did you go to Crow Agency on that occasion in anticipation of that meeting happening?

A. Yes.

Q. Did you go alone? Did anybody else go with you?

A. I went with our investigator out of Casper, Mike Ehlebracht. And I went with our investigator out of Lander, Scott Browning.

Q. All right. Did the meeting take place?

A. No.

Q. All right. What happened next?

A. We -- I believe Clayvin had sent Jose a text [236] saying he couldn't make it the morning of the 11th. So we planned on meeting him the following day on the 12th.

Q. Did you go back to that same location on the 12th?

A. Yes.

Q. Was the meeting set for any particular time?

A. 10:00.

Q. All right. Did -- did defendant show up at 10:00?

A. No.

Q. What happened after that?

A. Well, we couldn't get ahold of him, so Jose contacted kind of I guess the supervisor of the Tribal Fish & Game at that point -- his name is Martin Not Afraid -- to come and talk with us, to kind of explain the situation to him to hopefully get Clayvin to come in and talk to us.

Q. All right. And as a result of that request, did -- did the defendant show up that day?

A. Yes.

Q. Approximately what time did you meet with him?

A. It was about 10:00. Lunchtime.

Q. Okay. Did he say anything to you upon arrival?

A. Yeah. He -- Martin had told him kind of the gist why we're there, to talk about some elk illegally [237] being killed. When Clayvin showed up, he said something to the effect of I'm here to receive some citations or something.

Q. Okay. Before speaking to him, did you advise him of his rights?

A. Yes.

Q. Did he agree to speak to you?

A. Yes.

Q. Did you discuss what you'd -- the nature of the investigation? Did you or anybody who was with you tell him the nature of the investigation you had conducted?

A. Yes.

Q. All right. Did he -- did you make clear to him when you did that, that you considered him a suspect in the violation of laws?

A. Yes.

Q. Did you proceed after you did that -- did you show him any of your evidence?

A. Yes.

Q. Okay. I'll show you page 1 here of State's Exhibit 8, a photograph that you said you found on Monster Muleys on January 30th of 2014. Did you show him that photograph?

A. Yes.

Q. Did he acknowledge that it was him in that [238] photograph?

A. Yes.

Q. Did you show him that photograph marked as page 1 of State's Exhibit 12?

A. Yes.

Q. Which is a photograph, I believe you testified a photograph you found on Monster Muleys on January 30th of 2014; is that correct?

A. Yes.

Q. When you showed him that photograph, did he say whether he killed the elk that (unintelligible)?

A. He acknowledged that he had killed that elk.

Q. Did he say when the kill occurred?

A. He said winter.

Q. Did you show him the map?

A. Yes.

Q. Showing you State's Exhibit 24, which is the demonstrative exhibit of State's Exhibit 22. How similar is that to the map that you showed him?

A. Similar.

Q. Does the map you showed him show that same area?

A. Yes.

Q. Did it show the location of the sites?

A. Yes.

Q. Did it show the lines of the state line?

[239] A. Yes.

Q. And did it have the markings -- the markings of the state of Wyoming on it?

A. Yes.

Q. The -- what did you tell him when you showed him that?

A. Well, we told him that we had discovered location where he had killed his elk. We needed to kind of work it out, essentially. We essentially asked him, you know, who was with him during that hunt.

Q. Did you tell him that -- when you pointed to the place -- I'm sorry to interrupt you. But when you pointed to the place where his site was, did you tell him how far into Wyoming that was?

A. Yes.

Q. What did he say, if anything?

A. He didn't say anything. When I, you know, told him that you know that state line -- that the fence was running on the state line, he acknowledged, yeah, looking at it.

Q. All right. And then you started to say that you asked him who was with him. Did he have any answer when you asked him who was with him on that hunt when he killed the elk he said that he killed?

A. Yes. He told us Ronnie Fisher, DL Singer, [240] Colton Herrera, Colton Herrera, Jr., Daniel Ceasley and Barry Whiteman.

Q. Showing you page 1 of State's Exhibit 13, a photograph of Ronnie Fisher and DL Singer that you found on the Monster Muleys website on January 30, 2014. Did you show him this photo?

A. Yes.

Q. All right. Did he identify who killed that?

A. Yes.

Q. Who did he say killed it?

A. He said Ronnie Fisher killed that elk.

Q. The -- and did you show him that photograph?

A. Yes.

Q. All right. Okay. The -- in his statements to you -- so -- okay. So he told you the other people who were with him that day were -- included Ronnie Fisher and DL Singer?

A. Yes.

Q. And Colton -- what's the name of his brother?

A. Colton Herrera, Sr.

Q. Is?

A. That's his -- that's his son in that photograph, Colton Herrera, Jr.

Q. Okay. Let's go back to this map for a second. In his statements to you that day, did he describe to you [241] how they came to shoot these animals?

A. Yes.

Q. And did he do that utilizing the map that we're showing here?

A. Yes.

Q. Can you identify, using this map, basically what he pointed to and what he said?

A. That they had started -- there's kind of a bowl down here that they started in. The elk were moving up the ridge, so they moved up the ridge behind them. And they got into some trees. He kind of believed at one point the elk hunt was over because they didn't see any more.

Q. And to be clear. He was pointing at the map?

A. Yes, he's pointing up --

Q. Is he actually pointing to --

A. -- up here.

Q. -- points that you're pointing to --

A. Yes.

Q. -- when he's giving you his explanation?

A. Yes.

Q. Okay.

A. He said he thought it was over until he got into these little trees over here and he said he saw the rump, a butt, of an elk.

[242] Q. Where?

A. Over here.

Q. Okay. And then what else did he tell you? And so he stated that he's here when they saw the animals?

A. Yes.

Q. Did he say how many animals they saw?

A. Three.

Q. Did you ask him how many animals they killed that day?

A. Yes.

Q. And how many did he say?

A. He said three.

Q. All right. When he told you that he was in this location, when he saw the animals, how far in Wyoming is he?

A. Over three-quarters of a mile. Right at three-quarters of a mile.

Q. Did he make any statements to you when you were talking to him about sort of when they planned to actually go on this hunt?

A. They planned it the night before.

Q. Did he say what time of the day they actually saw -- when the kill occurred, when they saw the animals, what other details did he provide you about what happened that day?

[243] A. The time of the kill was between 9:00 and 10:00 in the morning.

Q. And when did they first -- according to him, when did they first see the animals? If he said so.

A. I -- he had seen them the night before, but he didn't specify that day when they had seen them.

Q. All right. The -- did he know where the head was to the animal that he said he killed?

A. Yes.

Q. And where was that?

A. That was at his father's house in Hardin.

Q. Okay. As a result of what you learned in your investigation and what he told you that day, what did you do with respect to Mr. Herrera?

A. He was informed that he could be cited or we could do it essentially long form.

Q. What decision did you make to do?

A. He decided to voluntarily accept the citations.

Q. All right. So you issued citations, and what did you issue citations for?

A. I issued citations for being an accessory to taking antlered elk during a closed season and taking an elk during a closed season.

Q. All right. Did you have any requests of him -- when you issued him the citations, did he have any [244] questions for you and when he accepted them?

A. He was -- just was wondering where the courthouse in Sheridan was.

Q. And did you tell him where it was?

A. Yeah.

Q. Okay. The -- you told him -- you just testified a minute ago that he knew where the head was. What happened -- did you have any requests of him?

A. Sometimes it could be difficult finding people around Crow Agency. I handed him my business card and asked him if his brother or any of the other

individuals who -- if he saw them, if they could make it easy, just contact us, we'd contact them and interview them.

Q. I must have asked the question poorly. He told you he knew where the head was of the elk rack that he killed.

A. Yes.

Q. Did you go get that rack?

A. Yes, we did.

Q. All right. How did that happen?

A. He had to get some gas at the gas station there, and we followed him to Hardin where we stopped in front of a residence and retrieved the head.

Q. All right. Did that occur that same day?

A. Yes.

[245] Q. And did you -- so did -- what did you do with the elk -- when you saw the elk rack, did you recognize it as the elk rack in the photograph?

A. Yes.

Q. And what did you do with the elk rack?

A. Essentially, the elk rack was -- when we -- when Clayvin gave it to us, it was -- we put a seizure tag on it, documenting we had received it from him, and we issued him a receipt indicating to him that we had taken the head.

Q. All right. And did you place the -- that rack into evidence?

A. Yes.

Q. The did -- okay. You said you saw it and you recognized it as the elk rack from the Monster Muleys

photos. Can you explain why you were able to recognize it?

A. Well, the bull, looking at the photograph -- like I stated earlier, it's got on the left side, the second brow tine is kind of small and kind of lays against the beam, so that you're looking at it head on, you can't really see it. And when I saw -- when I saw that point I knew -- his bull also, kind of on the -- the tail end of it, it's kind of got some mass. It's kind of -- it's got some nice mass to it. I recognized that as being the elk.

[246] Q. Okay. I'll show you State's Exhibit 26. What is that?

A. That is a recreation of our fish habitat biologist holding the head that we received from Clayvin Herrera, trying to get the angle correct from the picture we downloaded from Monster Muleys showing it's the same elk.

Q. So there's two photographs in that State exhibit. One of them is the Monster Muleys photo where he is wearing the rack?

A. Yes.

Q. And second photo is a Game & Fish employee attempting to hold it the same way?

A. Yes.

Q. All right. And would it -- does it kind of make the similarities between the rack and the rack seen in the Monster Muleys photograph evident to you?

A. Yes.

MR. LAROSA: State would move the admission of State's Exhibit 26.

MS. GRAY: No objection.

THE COURT: 26 is admitted.

(State's Exhibit No. 26 received in evidence.)

Q. (BY MR. LAROSA) Can you please just hold it up [247] and show it to the jury. Thank you.

You mentioned just before I interrupted you and asked you a different question, that you asked him for a little help in -- in locating some of the other individuals. What was your specific request again?

A. If he could contact some of the other individuals that he had told me were with him, especially his brother, to help us contact him and resolve this issue.

Q. Okay. And is -- by -- by his brother, you mean Colton Herrera?

A. Colton Herrera, Sr., yes.

Q. Okay. And did his brother subsequently call you?

A. Yes.

Q. When did that happen?

A. I was not home when he called the first time. I believe it was the 14th of September. I called him back on the 26th, and I believe I talked to him again on the 29th of September, and we agreed to meet the following day, on the 30th.

Q. And where did that meeting subsequently take place?

A. It was at the BIA police office.

Q. Okay. Okay. When you met with him, did you [248] obtain any of the -- any evidence from him?

A. Yes. Yes. We asked to speak with him. He didn't want to speak with us. He was issued a citation.

We asked if we could get the elk head back, and he said yeah. So we followed him to his residence in Crow Agency and he provided us with the elk head.

Q. Okay. And what did you do with that elk head once he gave it to you?

A. It was seizure -- seizure tagged and put into evidence, locked into evidence.

Q. That tag, did you identify that you take it from him -- that you took it from him?

A. Yes.

Q. All right. I'm going to show you State's Exhibit 27. There are two photographs on that exhibit, are there not?

A. Yes.

Q. What are those two photographs?

A. Photograph on the left is Colton Herrera, Jr. holding the elk head from the elk he harvested. And the photo next to him is our aquatic habitat biologist holding the same head, trying to hold it in the same manner to kind of recreate the photograph from Monster Muleys.

Q. All right. And does examining that -- and when he gave you that rack, did you recognize it as the rack [249] that was in the photograph of his son, standing in front of that dead elk at the kill site that you found?

A. I did. It's got kind of unique -- kind of -- it's -- its eye guards are kind of close together. And I believe on the right side it's kind of got a little wave to it that I recognized when I saw it.

Q. And can you use that exhibit to explain what you mean by that to the jury, please?

MR. LAROSA: I will stay -- move the admission of State's Exhibit 27 now.

MS. GRAY: No objection.

THE COURT: 27 is admitted.

(State's Exhibit No. 27 received in evidence.)

Q. (BY MR. LAROSA) Please proceed, Warden.

A. So here is the Monster Muleys photograph. Here's the photograph that we recreated. You can see these -- these points, these eye guards, are some -- some bulge way out. Some are kind of narrow. On both sides of this elk they're kind of close together to one another. It's also on the -- on the right side, on the last point, there's kind of like a little wave to it. You can see in this photograph, the same picture has that little wave to it.

Q. Okay. Were you able to make contact with [250] Ronnie Fisher?

A. Yes.

Q. When did that occur?

A. It was October 2nd of 2014.

Q. All right. Were you able to -- did you -- did he give you anything?

A. Yes. He gave us an elk head.

Q. Okay. And when he gave you an elk head, did you recognize that elk head?

A. Yes.

Q. And what -- what did you recognize it to be?

A. It -- it appeared -- it wasn't so obvious as these two, but it appeared to be the same elk from the

photograph that I downloaded off the Monster Muleys website.

Q. And by that, are you referring to the photo of -- of him and DL Singer standing over a dead elk?

A. Yes. Shaking hands, yes.

Q. Let me show you State's Exhibit Number 28. There are two photographs in that exhibit, are there not?

A. Yes.

Q. And is one of them the photograph of Ronnie Fisher and DL Singer standing over the elk at the site that you later found?

A. Yes.

[251] Q. What is the other photograph?

A. The other photograph is a recreation that did in our office with another Game & Fish employee.

Q. And the -- when Ronnie gave you that, did you recognize it to be the elk from the photo?

A. Yes.

Q. The Monster Muleys photo.

And does that comparison shot allow you to explain and the jury to see the reason why you believe that it was?

A. Yes.

MR. LAROSA: State would move the admission of State's Exhibit 28.

MS. GRAY: No objection.

THE COURT: 28 is admitted.

(State's Exhibit No. 28 received in evidence.)

Q. (BY MR. LAROSA) Please proceed and explain.

A. So you can see -- it's kind of hard to see the left side, so I really couldn't tell. But on right side, a fifth point kind of comes back. It's real short. It just kind of comes back and stops. If you look in this picture, it's kind of hard to see. You can kind of see it poofing out right there in the photograph with Seth [sic]. You can also see -- other thing I noticed is on again on [252] his eye guards, the first eye guard is a lot longer than the second one. You can really see it in the picture of Ronnie and DL. Given the angle, you can't really see it very well in that one. But that's what I noticed about the two.

Q. Thank you.

Did you meet with DL Singer also?

A. Yes.

Q. And when did that occur?

A. That occurred -- I believe it was February of 2015, when we finally met with DL.

Q. All right. Were citations issued to him and Ronnie Fisher also?

A. Yes.

MS. GRAY: I'm sorry. I didn't hear the date you said you met with Ronnie.

THE WITNESS: I'm sorry?

MS. GRAY: I did not hear the date you said you met him.

THE WITNESS: It was in February.

MS. GRAY: Of what year?

THE WITNESS: I believe it was 2015.

MS. GRAY: '15.

THE WITNESS: Yes. I'd have to refer to my notes on exact date.

[253] Q. (BY MR. LAROSA) Would it be fair to say it was well after the time of the other interviews?

A. Yes. It was the last one.

Q. The -- okay. All right. You testified that you -- you found remains at the three sites set forth in State's Exhibits 12, 13 and 14, and that they were placed into evidence, that you were given elk racks from Clayvin Herrera, Colton Herrera, Jr. and Ronnie Fisher, and that you recognize them to be the elk racks in the photos. And in the case of Mr. Herrera, the photo -- the elk rack -- the elk that he said he killed, and that you placed this all in evidence.

What did you -- did you do anything subsequently with the evidence that -- with those six items that you seized and placed into evidence?

A. Well -- excuse me -- since we believed we had the heads that would match the kill sites on the mountain, we sent all -- all three pelvises and all three elk heads to our forensic lab for species identification, for gender identification and then for DNA matching to see if the pelvises we found in the field matched the heads that we recovered from the individuals.

Q. All right. And is this sort of the matching capabilities that you were discussing at the outset of your testimony several hours ago?

[254] A. Yes.

Q. The -- and is that -- is -- all right. And the -- were the items actually sent there?

A. Yes.

Q. And did you get -- did you -- were those the three things that you asked for performed?

A. Yes.

Q. And did you get the results back?

A. Yes.

Q. Okay. And were -- was the evidence returned to you?

A. I believe the -- we had the heads. The pelvises -- yeah, we actually have all of it.

Q. Okay. Okay. When you open a case, do you give it a number?

A. Yes.

Q. Do you recall the number you gave in this case?

A. It's 33114/16.

Q. Okay.

MR. LAROSA: One second, please, Your Honor.

THE COURT: Yes.

Q. (BY MR. LAROSA) You stated you received the report of the results from State's Exhibit Number 3. Is this that report?

[255] A. Yes.

MR. LAROSA: Those are all the questions I have at this time, Your Honor.

THE COURT: All right. I think due to the time we'll take our evening recess and start with cross-exam in the morning, Mr. Shorma. So you may step down. * * *

Excerpts from Trial Transcript
Circuit Court of Sheridan County,
State of Wyoming
April 28, 2016

[269] THE COURT: All right. Thank you.

All right. Warden Shorma, you want to come back up to the stand. You're still under oath.

And, Ms. Gray, you may cross-exam.

MS. GRAY: Thank you, Your Honor.

DUSTIN SHORMA

called for examination by Plaintiff, having been previously sworn, testified further as follows:

CROSS-EXAMINATION

Q. (BY MS. GRAY) Morning, Warden Shorma.

A. Good morning.

Q. I don't think we met officially. My name is Kyle Gray, and as you know, I'm representing Mr. Herrera.

I'm going to start with a pretty important, straightforward question for you, which is you testified yesterday that you had a fairly extensive interview with Mr. Herrera up on the Crow Reservation regarding this matter; is that correct?

A. Yes.

Q. And you thought at that time, and you believed then, that Mr. Herrera was honest with you; isn't that right?

A. Yes.

Q. And he's never told you a lie, has he?

MR. LAROSA: I would object. That's asking [270] him to speculate.

MS. GRAY: Fine.

THE COURT: Sustained.

MS. GRAY: Withdrawn.

Q. (BY MS. GRAY) After your interview, you, in fact, told your fellow investigator you were impressed with his honesty; isn't that right?

MR. LAROSA: I'd object. That calls for a hearsay statement.

THE COURT: If it's the statement of Warden Shorma, it would not be hearsay, so that would be overruled.

You may answer.

A. Yes.

Q. (BY MS. GRAY) And you believe he was truthful in that interview, correct?

A. I believe saying like yes or no wouldn't adequately describe -- I think more so than not. I mean, there was some indiscrepancies [sic].

Q. Mr. Shorma, you said to Mr. Ehlebracht that he was honest, didn't you?

A. Overly, yes.

Q. I'm sorry. What did you put in front of that?

A. Well -- yes. Like overly.

Q. Again, what was your qualification there?

[271] A. Yes.

Q. So yes. The answer is yes.

A. Yes.

Q. We'll go through some more about your interview Mr. Shorma, but I did want to ask you a couple of questions regarding the boundary dispute.

MS. GRAY: Your Honor, may I approach?

THE COURT: Yes.

MS. GRAY: (Unintelligible) do you have the exhibits from yesterday?

THE COURT: They're on the corner right back there. The bailiff can hand them to you.

MS. GRAY: (Unintelligible.)

Q. (BY MS. GRAY) Do you remember this exhibit, Mr. Shorma?

A. Yes.

Q. Hang onto it for a minute.

So Mr. Shorma, we had some testimony yesterday regarding the border -- the marking of the border between the Crow Reservation and the Bighorn National Forest between the state of Montana and state of Wyoming. I'm sure you remember that, don't you?

A. Yes.

Q. Okay. That exhibit you have there, what does that red mark show?

[272] A. The red line --

Q. Yes.

A. -- as it's -- as it's drawn on this photograph, indicates the location where the fence is.

Q. And so you testified yesterday that you were confident that that fence marked the -- the border, correct?

A. Yes.

Q. So when you look at that -- you can hold it up for -- for the jury -- the fence runs straight and then takes a jog up to the north, doesn't it?

A. Yes.

Q. Parallel lines don't jog like that, do they?

A. No.

Q. So that fence is wrong, isn't it?

A. That portion of it.

Q. It's not marking the border there.

A. No.

Q. And that's obvious because you think the border is below. To you, that's your belief, that one portion is right and the other portion is not?

MR. LAROSA: I'm going to object. I believe she's asking him for a legal opinion.

THE COURT: Overruled.

Q. (BY MS. GRAY) You remember the question?

[273] A. Would you restate it for me, please?

Q. Yeah. Sorry. Your belief is one portion of the fence marks the border and one portion doesn't.

A. Yes.

Q. Okay.

MS. GRAY: May I approach, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) Mr. Shorma, I'm handing you a document. Can you tell me what the name of that document is?

MR. LAROSA: Your Honor, I have an objection to make, and I would like to approach.

MS. GRAY: All right.

(Inaudible sidebar conference.)

MS. GRAY: May I have a moment, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) Mr. Shorma, when you looked into this issue of where this crime occurred, you investigated that -- you testified yesterday that you feel like you investigated that thoroughly, correct?

A. Yes.

Q. Did you do any specific investigation regarding the -- I also believe you testified, didn't you, that the fence was maintained and erected by grazing permit holders in the Bighorn National Forest. Do you remember that?

[274] A. That's correct.

Q. And that those are people who own -- hold permits from the United States Forest Service, that they are not governmental officials; is that correct?

A. That's correct.

Q. Did you look for any investigative materials that might be important to your conclusions that have been issued by governmental issues -- governmental officials? So anyone from a government authority discussing the issue of where the border is or are there disputes regarding the border.

A. I did not.

Q. You did not.

That would have been a more thorough investigation, wouldn't it?

A. Yes.

Q. Mr. Shorma, so your -- your district, as you testified yesterday, how long did you say the border was between your district and the Crow Reservation?

A. I answered yesterday that my district borders the state of Montana by approximately 80 miles. It probably borders the Crow Reservation for 45, 50 miles, maybe.

Q. Okay. Have you ever looked to see where the Crow boundary starts and where it ends?

[275] MR. LAROSA: I would object on relevance grounds.

THE COURT: Any response to that?

MS. GRAY: Pardon -- pardon me, Your Honor?

THE COURT: Do you have a response to --

MS. GRAY: Yeah. My response is I'm going to ask Mr. Shorma about his involvement with the Crow tribal officials and what his knowledge is regarding where he should be carefully considering whose boundary he's dealing with.

THE COURT: I guess my question, are -- can you narrow the question as to his -- what boundary you're talking about?

MS. GRAY: Oh, sure.

Q. (BY MS. GRAY) So you recognize, then -- I think you just said, there are -- so there's a boundary between the states, Montana on the north and Wyoming on the south; is that correct?

A. Correct.

Q. Okay. And so parts of that boundary are also not just the state of Wyoming, the state of Montana. There's also some other governmental recognized areas. So the Bighorn National Forest, for example, is part -- is inside Wyoming --

A. Correct.

[276] Q. -- but it is also a federal property; is that correct?

A. Correct.

Q. Okay. And so the -- the Wyoming-Montana border, as it goes past or along the Bighorn National Forest, that border there involves the state of Wyoming, the state of Montana and the United States government; is that correct?

A. That's correct.

Q. Okay. So -- and then there's a fourth area there. That is the Crow Reservation, correct?

A. Correct.

Q. And that too is the same boundary, but parts of it are in your district, parts of it are not; is that correct?

A. Correct.

Q. Okay. And that borders -- so on the east there are parts of your district that border Montana, but not the Crow Reservation; is that correct?

A. Correct.

Q. Are there parts of your district that border the Northern Cheyenne Reservation?

A. No.

Q. Okay. So where does your district border -- or does the border between Montana and Wyoming -- let's see how to ask this. Where is -- is there a spot to the east [277] of where the border is on the Crow Reservation that is just between Montana and Wyoming and not between Montana, Wyoming and an Indian reservation?

MR. LAROSA: I would object to the relevance of this line of questioning.

THE COURT: Overruled. You may answer.

A. Yes.

Q. (BY MS. GRAY) Okay. Where is that?

A. It's a little from the -- in Sheridan County, the Youngs Creek Road. It would be just a little bit east of where the Youngs Creek Road goes into Montana.

Q. Okay. So then --

A. Excuse me. West of the Youngs Creek Road. I'm sorry.

Q. Okay. I understand it's difficult to do directions without a map in front of you.

So keeping in mind what your district is, then, what I'm asking you is how much of your district border is on -- runs along an Indian reservation as opposed to not along an Indian reservation.

A. A little more than half. So I -- my district borders Montana for approximately 80 miles.

Q. Uh-huh.

A. 45, 50 of that borders the Crow Reservation.

Q. Okay. Okay. So at least half -- around half, [278] give or take?

A. Yes.

Q. Okay. So when you are investigating something that has happened on the part of the border that does not involve the Crow Reservation, do you -- do you have cross border issues? Do you have relationships with members of the Montana Fish & Game department?

A. Yes.

Q. So if you got an incident that's close to the border, you reach out to these officials of the State of Montana?

A. Yes.

Q. Okay. And that's pretty customary for you to do?

A. Yes.

Q. Okay. So -- and if you do have a question about jurisdiction between Wyoming Fish & Game and Montana Fish & Game, how do you work that out?

A. As far as if you have a violation, is that what you're asking me?

Q. Yes.

A. Well, essentially both of us -- in the event you have something like that, both of us kind of take note. We go back with the information we have and make sure that when we, you know, look at that information and plot it, [279] that we're in the correct state before any kind of enforcement action is taken.

Q. Okay. So if there's a question, you do some more investigation?

A. We do our homework to make sure we're in the right spot, yes.

Q. Okay. Good.

MS. GRAY: Your Honor, may I approach?

MR. LAROSA: Your Honor, may we approach?

THE COURT: Yes.

(Inaudible sidebar conference.)

MS. GRAY: May I have a moment?

THE COURT: Yes.

MS. GRAY: Your Honor.

THE COURT: Yes.

MS. GRAY: We would like to make an offer of proof, and I think that will require the jury to not be present.

THE COURT: All right.

MS. GRAY: May we do so?

THE COURT: You can do so.

All right. At this moment we have certain business to take care of outside the jury, so if you'll all rise, the jury will recess.

(The following proceedings were held [280] outside the presence of the jury.)

THE COURT: All right. Thank you. Be seated.

There is a sign outside the courtroom that there's no drinks in the gallery. If you would please take your beverages outside the courtroom, please. That applies to everyone. Any beverages?

MR. LAROSA: I'm sorry. I didn't hear the Court.

THE COURT: I was just instructing that there's a sign outside the courtroom not to bring beverages

inside the courtroom, and I just ask that be removed. Just our policy.

MS. GRAY: Your Honor, so I'm going to ask Mr. Shorma.

THE COURT: All right. Go ahead.

MS. GRAY: Thank you. It will be a little less formal. What we're doing here, Mr. Shorma, just asking you --

Q. (BY MS. GRAY) Okay. So the first document I'd like you to take a look at is -- I've got it marked as Defendant's Exhibit 149. Can you read the title of that document?

A. The Settlement Agreement Between the Crow Tribe of Indians and the United States to Resolve the 107th [281] Meridian Boundary Dispute.

Q. Okay. Can you please identify -- this document is notarized; is that correct? You know what a note -- notarization is?

A. Yes. I guess I can't see her stamp on it, but --

Q. You can flip the page.

A. Ms. Edwards. Okay. Yes.

Q. It's a notarized document?

A. Yes.

Q. Can you tell me who the signatories are, please? Just flip through.

A. Bruce Babbitt for the --

Q. What was his title?

A. I believe he was the chief and the Secretary of Interior at that time.

Q. Secretary of Interior?

A. Uh-huh.

Q. 1994. Do you remember when Mr. Babbitt was Secretary of Interior, or is that a little early for your time?

A. I do remember.

Q. Okay. So he was President Clinton's Secretary of Interior?

A. Correct.

[282] Q. So what's the secretary -- do you understand who the secretary -- the title of Secretary of Interior, who that is?

A. Yes.

Q. Okay. And can you tell me what your understanding is of that.

A. He oversees Bureau of Land Management, Fish & Wildlife Service. He oversees the Bureau of Indian Affairs.

Q. National Park Service?

A. National Park Service.

Q. All of the federal lands?

A. Not all of the federal lands.

Q. Okay. That's a good point.

So what lands -- what federal lands does he not oversee?

A. U.S. Forest Service.

Q. United States Forest Service. And who is that overseen by?

A. Department of Agriculture.

Q. So that would be the Secretary of Agriculture would be at the top of that --

A. I thought you meant like at the time.

Q. -- federal -- no, I'm not asking you who the Secretary of Agriculture was.

[283] A. I couldn't tell you who was in --

Q. No, I'm not asking you who the secretary is.

A. I don't know that.

Q. Okay. So what's the date of this document?

A. November 20, 1994.

Q. So it's more than 20 years old today?

A. Yes.

Q. Okay. And who is the second signatory?

A. Clara Nomee.

Q. And is that -- is Ms. Nomee identified by a title?

A. Yes. She is the chairman of the Crow Tribe.

Q. Okay. So we're talking about -- what's your understanding of the Crow Tribe as it compares to, say, the state of Wyoming, the state of Montana? Is it a sovereign entity?

A. It's a sovereign nation.

Q. Okay. You understand that --

A. Yes.

Q. You understand that it's part of your job duties?

A. Yes.

Q. Okay. So if -- you just testified that if you had a dispute between -- well, so Montana's a sovereign entity; is that correct?

[284] A. Correct.

Q. State of Montana.

State of Wyoming is a sovereign entity.

A. Correct.

Q. And so you just testified when you have a dispute between sovereigns -- you're aware of a dispute between sovereigns, you do further investigation to see whose jurisdiction it is, right?

A. That's correct.

Q. Okay. So what I want to ask you, when you did your investigation -- oh, let's -- oops. Sorry about that.

A. That's okay.

Q. Let's identify this -- well, here. Let's do a little bit more on this settlement agreement. So you see those between the United States and the Crow Tribe. And there's some things called Recitals. If you were reading this document just stand-alone, you had no lawyers standing behind you and all of that, would you understand what that term meant?

A. Recitals?

Q. Yes.

A. No.

Q. No. Okay.

So if you started looking at this document, [285] would you see they set out some facts about what the dispute is?

A. Yes.

Q. Okay. So there is a "whereas" that starts as a last sentence on page 1. Can you read that whereas? Can you read --

A. The very last one?

Q. Yeah.

A. Whereas the 1891 survey line straight to the west, creating a strip of land approximately 36,165 acres which was excluded from the Crow Indian Reservation, of which approximately 12,965 acres were included in the Northern Cheyenne Indian Reservation.

Q. Okay. And you understand from your job duties that the -- the border -- the eastern border of the Crow Reservation abuts with the western border of the Northern Cheyenne Reservation?

A. Yes.

Q. So you know what a settlement agreement is, right?

A. Yes.

Q. (Unintelligible.)

A. Okay.

Q. Okay. So there's another whereas clause that starts as the end of page -- right? Yeah --

[286] A. Right there.

Q. -- that last whereas clause, end of the page. I'm just going to ask you -- you can read that to yourself. Basically it says that the Crow Tribe has sued the United States regarding the boundary issues; is that correct?

A. Yes.

Q. And the whereas clause, that starts -- so it's the first sentence of the first full paragraph on page 3. Can you just read that first sentence of that whereas clause.

A. Whereas the United States contends that prior to the date of enactment of the Crow Boundary Settlement Act and the execution of this agreement, the legal eastern boundary of the Crow Reservation is the 1891 survey line.

Q. Okay. And so that's the United States taking a position in an official court document, a document that's agreed to by the Secretary of the Interior of the United States of America, correct?

A. Correct.

Q. Stating the position that the United States -- it is the position of the United States of America that the -- a border is what the legal survey says, is that right --

A. Yes.

[287] Q. -- what you read?

A. That's correct.

Q. So if you had read that -- well, let's -- let's -- one more thing. I'm just going to ask you to take a look at this.

So the settlement happened and -- let me ask you this. You testified about your training in maps and such. And you understand what acreage is, right?

A. Yes.

Q. The surveyor I think in one of the pieces you read was about 36,000 acres; is that right?

A. Yes.

Q. So if you've got that many acres, look through -- look at the -- there's a Exhibit A. Can you tell us what Exhibit A is to this document.

A. Undisposed of surface estate parcel number 1.

Q. And it's a -- it's an appendix that shows acreage for various parcels?

A. Yes.

Q. And so there's some that -- let's look. There's one here that's off. (Unintelligible) acres.

A. Yes.

Q. So what's an acre measure in miles? How -- how would one look at an acre being off and know, you know -- so if there's -- it's wrong by an acre, what does that [288] mean in mileage?

A. Well, one square mile is 640 acres.

Q. So if it's off an acre, it's off a mile?

A. No.

Q. Okay. So tell us -- can you --

A. I'd need a calculator.

Q. Do you have any -- so could you do that calculation and -- from here and determine -- if you looked at this document and see the acreage that you were talking about and you know there's that much of an error in the survey, okay? Would you have some doubts about whether that could be at least a mile off?

A. Well, looking at this, it's showing that it's in different sections in different lots. It's going to be going like this.

Q. I understand that. What I'm asking you -- I'm not asking you to say it is or it isn't. Would it raise questions for you about could be off a mile?

A. On this itself?

Q. Yes.

A. Yes.

Q. And probably more than a mile, right?

A. It doesn't appear to be.

Q. So --

A. I guess -- I mean, looking at the acreages, I [289] guess if it was a lot that was a foot wide --

Q. I'm not talking about just the lot. I'm talking about the -- so what you read was it jogs -- it was off, the -- the surveyor was off. What I'm asking is read this. You just said it raises some issues for you that it could be a mile. And I was just asking you, it could also be more than a mile off, given the amount of acreage.

A. Well, on parcel number 1, it wouldn't be --

Q. I'm not asking about parcel number 1.

A. Oh.

Q. I'm asking about the whole amount.

A. It could be.

Q. It could be.

A. Depending on the lot, yeah.

Q. That's what I'm saying. It raised some questions in your mind.

A. Yes.

Q. Okay. So there's a lot of verbiage here. I'm just going to -- one of the -- one of the pieces of this

settlement set up a -- a trust fund for the Crow Tribe into which the United States agreed to put mineral reserve amounts. And you understand what that -- how that would work, right?

A. Yes.

Q. What that is.

[290] Okay. So what the United States agreed to in this document is that they would turn over mineral payments that they -- well, let me ask you this. So you understand that when a mineral -- a mineral is a subsurface interest in a -- a surface land; is that right?

A. Yes. Are you talking about royalties --

Q. Yes.

A. -- is where you're getting --

Q. Yes. So, you know, what a -- a coal royalty or an oil & gas royalty.

A. Yes.

Q. Okay. So that's an amount of money that is paid by a nongovernmental entity, so like an oil company or coal company or an individual, who leases from a sovereign entity the right to extract that mineral and sell it. That's what it is?

A. That's correct.

Q. And so there's money that the coal company makes when it sells the coal to somebody else?

A. Correct.

Q. And part of that money that it makes when it sells is the royalty that it owes to -- let's say it was the United States that -- that granted the mineral

interest. It would owe that money to the United States; is that right?

[291] A. Correct.

Q. Okay. So if it was Wyoming that issued the mineral lease, the coal company would owe that money to Wyoming?

A. State of Wyoming, correct.

Q. And if it was the Crow Tribe that issued that mineral lease, that money would be owed to the Crow Tribe; is that right?

A. Correct.

Q. Okay. So this is -- part of the settlement the United States is agreeing to give the tribe mineral -- its mineral interests that are paid to it. Is that -- so is that a fair reading of that paragraph? I know it's a lot of legal --

A. Can you just give me a sec.

Q. Yeah.

A. Yes.

Q. And the United States agreed to put into that trust for the Crow Tribe because of the boundary error. How much --

A. 80 --

Q. -- in the dollars?

A. 85 million --

Q. 85 million?

A. -- dollars, yeah.

[292] Q. So my question is had you known about this document and you read it and you understood it and you talked to whoever you needed to talk to about

it, the fact that there was an $85 million dispute regarding the surveying of the eastern borderline, if you also knew that the survey of the southern borderline was carried out around the same time, similar ways of doing surveys, that would have raised some question in your mind, wouldn't it, regarding whether there was a dispute about this southern border?

A. No.

Q. That would not have raised it?

A. If there's $85 million at stake on a border that's not correct, why wouldn't they be fighting for that border?

Q. All right. Let's go on to the next document. Can you identify what this document is?

A. May 7, 2013, the Crow tribal legislature.

Q. Okay. So, again, we talked about you understand the Crow Tribe is a sovereign entity and it has a legislative body.

A. Uh-huh.

Q. And it's just like Wyoming or Montana, it issues laws and resolutions and things of that nature. Okay. So --

[293] MS. GRAY: Your Honor, I don't know any other way to do this other than have him review the document. So I know it will take a moment, but I'm going to have him review the document.

Q. (BY MS. GRAY) Just read it to yourself.

A. Okay.

THE COURT: While he's reading that, I was thinking are there some other documents you want to

just go ahead and make offers of proof on right now? I'll let you make a record.

MS. GRAY: I don't think through him.

THE COURT: Okay.

MS. GRAY: There are other witnesses we were prepared to bring on, but maybe they don't get to testify, given Your Honor's ruling, so...

This is just regarding his credibility and his oath.

Q. (BY MS. GRAY) Have you had a chance to review it?

A. Yes.

Q. And you did testify, I think yesterday, you're not a lawyer, right?

A. Correct.

Q. You don't have any training in law?

A. Correct.

[294] Q. So that was a lot of legal verbiage.

A. That is correct.

Q. Okay. So you said they'd be fighting for their rights. This document shows they're fighting and disputing -- fighting is probably not the right word, but they're disputing with the United States and asking the United States to look into this issue, right?

A. Correct.

Q. So you also said you reached out to the BIA in this case?

A. Correct.

Q. Right?

But you didn't reach out to the BIA regarding this issue -- you didn't do any investigation with the BIA with regarding this issue of the border dispute; is that correct?

A. That's correct.

Q. Okay. And if you had and you had spoken with the folks at the BIA in the surveying and boundary division of the Bureau of Indian Affairs, and you had found out that, in fact, BIA has been looking into this issue and setting up doing follow-ups about surveying issues and where and how a new survey should be carried out. You -- would that have played -- would that have played a role regarding the type of investigation you [295] would have done on this issue?

A. If I was in any way aware that the tribe was having some kind of survey work done, I would have investigated, but since I had no idea that this even existed, I did not.

Q. Okay. And you had no idea that -- that these documents existed because you just didn't look into this issue; is that right?

A. I would have imagined an issue like this, if it would have come forth, I probably would have seen it in the paper well before this instance. And if it had, I would have looked into it. But since there -- to my knowledge, the best of my knowledge, there was no dispute on where the boundary was, old boundary markers and boundary markers up until '95 was still on the same spot and had not been moved. I didn't investigate it.

Q. You didn't investigate it.

What's your level of -- so Mr. -- I think you testified Mr. Herrera reached out to you regarding the Crow -- the -- he wanted to work at your -- your team of wardens and your forensic capabilities and things of that nature, right?

A. Correct.

Q. So what did -- did you ever initiate and attempt to find out what the Crow tribal authorities believed [296] regarding the authority -- your authority and this issue about the border?

A. I guess --

Q. That wasn't very clear.

Did you make any attempts to reach across the Crow border and talk to people in charge over there?

A. Yes.

Q. Okay. And when -- was that to Mr. Herrera?

A. No.

Q. Okay. Any others?

A. His predecessors, yes.

Q. Okay. So you do have some level of -- of communication with the Crow Tribe?

A. Yes.

MS. GRAY: Okay. I think we're getting out of the realm now of the -- the offer of proof. Can I have a moment?

THE COURT: Yes.

Q. (BY MS. GRAY) Mr. Shorma, so you testified you didn't know about any of this, but now you do, right?

A. Correct.

Q. Okay.

THE COURT: Are you still in the offers of proof?

MS. GRAY: Yeah, I'm on offers of proof.

[297] Q. (BY MS. GRAY) So knowing this, does that affect your level of confidence that you testified yesterday regarding where the border is?

A. Yes. Or, excuse me, can you ask me the question again? I'm sorry. I --

Q. No. That's fine.

A. I blanked out for a sec.

Q. Knowing all this now --

A. Yes.

Q. -- would this affect your level of confidence that you testified to yesterday about?

A. Where the southern boundary is?

Q. Yes.

A. No.

Q. It would not?

A. It hasn't changed.

Q. What, your level of confidence has not changed?

A. No. The boundary is still where it's at. I don't have any I don't -- I don't think that even if I had seen this, I don't think it would influence anything about where the boundary is on the southern border.

Q. What I'm asking you is, would it influence -- would you have a reason to do further investigation into this issue?

A. If I had been aware of it, I would have looked [298] into it.

Q. Okay. And how would you -- would you have looked into it by handing this over to lawyers in your department?

A. I probably would have started locally, because obviously where this boundary we're talking about, it encompasses the Forest Service. I would have probably asked them if they had seen any of this.

Q. So you would have reached out to someone with the United States government?

A. That's where I would have started with, yes.

Q. Okay. And so if you had a similar understanding of the dispute between Wyoming and Montana, it would -- Indian reservation out of the equation, how would you have looked into that?

A. I probably would have started with -- I mean, the local assessor would probably be the first place I would have looked.

Q. And if it raised an issue in your mind that you should do some further investigation, you're going to turn it over to lawyers and ask what do I do here?

A. Yes.

MS. GRAY: I think I'm finished, Your Honor.

THE COURT: Okay. All right. We'll bring [299] the jury back in.

Unless, Mr. LaRosa, do you have -- I guess I should offer -- I can offer you an opportunity, since it was to his credibility as an offer of proof, if you want to --

MR. LAROSA: Well, I think the --

THE COURT: -- address it.

MR. LAROSA: -- the Court already ruled on the objection.

THE COURT: I did.

MR. LAROSA: And did say it was going to revisit --

THE COURT: It's still irrelevant. I'm still not going to allow the document in.

MS. GRAY: I understand that.

THE COURT: And she just wanted to make her record. So I allowed her to do that. All right. All rise.

(The following proceedings were held in the presence of the jury.)

THE COURT: Be seated.

Ms. Gray, you may continue.

MS. GRAY: Thank you, Your Honor.

CROSS-EXAMINATION (CONTINUED)

Q. (BY MS. GRAY) Mr. Shorma, move on to a [300] different issue here.

You remember yesterday you testified I think pretty close to the start of your testimony that it's the State of Wyoming and more specifically the -- your department, the Wyoming Game & Fish Department, that sets the open and closed seasons in Wyoming?

A. That's correct.

Q. Okay. And that's actually not the total picture for the entire state of Wyoming, is it?

A. Excluding national parks and national monuments.

Q. And other federal areas that we talked about here?

A. Yes.

Q. Okay. First, though, I think I'd like to go through -- yesterday you identified State's Exhibits 1 and 2. Do you remember that?

A. Yes.

Q. Okay. And so 1 is for 2013; is that right?

A. Yes.

Q. And 2 is for 2014.

A. Yes.

Q. And what's the date of the incident we're all talking about here?

A. January 18, 2014.

Q. Okay. And which of these two would apply to [301] that incident?

A. Kind of neither. If I could explain. We hadn't formulated our 2014 hunting seasons yet. We hadn't compiled the information to set a season in 2014 when the event took place. So this essentially did not exist.

Q. So "this" being State's Exhibit 2, the 2014 elk hunting regulations?

A. That's correct. We had not set a season when this happened.

Q. And it wasn't published?

A. It was not published.

Q. Okay. Now let's look at State's Exhibit 2013 [sic]. Yesterday you also identified an excerpt you took

out -- or Mr. LaRosa took out (unintelligible), right? That just looked at Hunting District 83 is it?

A. Uh, 38.

Q. 38. Sorry.

Okay. Can you look through this for a moment and tell me -- in fact, it's true, isn't it, that in 2013, there were open elk seasons in January in 2013?

A. In -- in --

Q. Not -- I'm just asking you in Wyoming, in all of the hunting districts in all (unintelligible) 2013 are in there, correct?

MR. LAROSA: Your Honor, I will object to [302] the relevance of a season in any other location other than the location at issue.

THE COURT: Overruled.

He can go ahead and answer.

Q. (BY MS. GRAY) Okay. Just flip through and tell me, are there open seasons in January 2013 in the state of Wyoming?

A. Yes.

Q. (Unintelligible.)

A. It's -- we have a couple of reasons. We have like cow-calf seasons, late cow-calf seasons.

Q. And there's hunting areas where there's bull elk seasons too, right?

A. No.

Q. Where you can shoot an antlered elk?

A. No.

Q. You don't think so in -- in January?

A. No.

MS. GRAY: All right. May I, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) Just by way of example, can you tell me Hunt Area 3, what the season is for any elk?

A. August 15th to January 31st, general license any elk valid south of U.S. Highway 26.

Q. So --

[303] A. I was aware of that -- it's uncustomary for us to hunt bull elk in January.

Q. Is it customary -- it's customary for the Crow to hunt in January, isn't it?

A. Correct.

Q. And in your interview -- and we can play the tape if it becomes necessary, but I think you testified you have a pretty good memory of what you talked with Mr. Herrera when you went up onto the Crow Reservation and interviewed him about this incident; is that right?

A. Correct.

Q. Okay. And in that interview, you said to Mr. Herrera we know I'm on your side, meaning the Crow Reservation side of the boundary. That's what you meant by "your side"?

A. That's correct.

Q. Okay. That you had no dispute that it would have been perfectly fine for Mr. Herrera to shoot the very same elk as long as it was on his side of the border?

A. Correct. They have no hunting seasons for elk.

Q. For elk. It's an open season in January.

A. Year-round.

Q. Okay.

A. To the best of my --

Q. So you agree that it's -- had he been on the [304] Crow Reservation, shooting that very same elk would have been perfectly legal?

A. Yes.

Q. And assisting others -- aiding others, whatever the language is of the -- the second count you made, that too would have been perfectly legal?

A. Correct.

Q. So in that secondary -- or that season we just looked at for -- as an example, for 3, that's open to January -- was open to January 31st. That's because elk are overpopulated in Wyoming, isn't it?

MR. LAROSA: I would object to relevance of that line of inquiry.

THE COURT: Sustained.

MS. GRAY: May I lay some foundation, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) What -- what -- don't you base season openings on the population of the animal in question?

A. Not necessarily.

Q. So what are things -- what are seasons based on? A. Well, some it depends on the license type. We had some licenses that open early and then go a long

time, essentially to address wildlife damage to private [305] property.

Q. Okay. So there's -- there's too many elk in place that are eating farmers' hay, you do something about that?

A. Yes.

Q. Elk are not an endangered species, that's right, isn't it?

A. Correct.

Q. And, in fact, they're a problem species in Wyoming in many places; isn't that true?

A. Problem species?

Q. Problem as in there's too many of them so they're going into places where they're just not wanted.

MR. LAROSA: I renew my objection. This is irrelevant to anything.

THE COURT: Overruled at this point.

A. Would you please ask the question again? I'm sorry.

Q. (BY MS. GRAY) No, no, no. That's not meant to you at all, Mr. Shorma.

So the -- one of the things that plays into setting seasons is that elk -- or that the animal in question is -- that it's -- there's -- there's too many for the area where you want them to be, where people can hunt for them, for example, and they've -- so they kind of [306] migrate onto private land and -- and eat haystacks or whatever it is that elk do.

A. In some instances, yes.

Q. Okay. And I think you -- you agreed that elk are not an endangered species, correct?

A. That's correct.

Q. And, in fact, in Wyoming, they're the -- your department is regulating and making decisions based on the -- the conclusion of the department that they want more elk to be hunted, not less elk?

MR. LAROSA: Same objection, Your Honor. And it was confusing and misleading.

THE COURT: I think the confusion is there. I think the question could be --

MS. GRAY: Let me lay some foundation for it, Your Honor.

THE COURT: It was a long statement.

MS. GRAY: Sorry, Your Honor. A moment?

MR. LAROSA: I would ask to approach, Your Honor.

MS. GRAY: I have the document I'm wanting --

(Inaudible sidebar conference.)

MS. GRAY: I apologize, Your Honor.

Q. (BY MS. GRAY) Mr. Shorma, I'm going to hand you [307] a document. Can you identify what that is?

A. This is the Wyoming Game & Fish Department's 2013 annual report.

Q. And you're a member of the Wyoming Game & Fish Department, right?

A. Yes.

Q. Do you review the annual reports?

A. Yes.

Q. And you understand they set policy of your department; is that right?

A. The Game & Fish Commission sets the policy, not the department.

Q. So this -- this contains (unintelligible) some of the policy for your department?

A. This is essentially an internal document.

Q. That talks about what?

A. What we did for 2013.

Q. Okay. Let's look and see if that's correct. Will you look at page 82, please. Are you there?

MR. LAROSA: Your Honor, I object to the admission of any of the contents of the document as irrelevant and confusing and misleading to the jury.

THE COURT: Ms. Gray, how is this relevant?

MS. GRAY: I was just about to ask him -- I'm almost finished with this, Your Honor. I just have [308] some objectives and that's policy of the department.

THE COURT: I'm going to sustain the objection. I don't know how this is relevant to our issue, what the department did when, we are here on what Mr. -- or Game Warden Shorma did.

MS. GRAY: Well, what I'm asking is one protocol (unintelligible) how the department manages the elk in Wyoming. Mr. Shorma can testify to that. The department tells its game wardens (unintelligible) -- well, let me ask him that question.

Q. (BY MS. GRAY) So what the department instructs you to do in terms of what's management situations are and how they manage all these elk

(unintelligible) the department gives direction how it wants the elk herds to be managed, do you pay attention to that in the decisions you make as a game warden?

A. Well, each hunt area, depending on where it is, is managed specifically towards its own goals.

Q. I understand, Mr. Shorma. What I'm saying is you pay attention to what your department tells you is its objectives and what its management positions are, correct?

A. We manage towards what -- like for the areas that we're responsible for, we manage those, correct.

Q. Correct. You manage those how the department lays out the objectives for you to manage?

[309] A. Well, it's not -- it's not -- if you're asking me like if my superiors ask me to manage in a specific way, they do not.

Q. And my question is do you make your decisions as a game warden, pay attention to what the department tells you are its management --

A. I guess I'm -- I guess I'm not following here, because --

Q. Let me ask you -- so this document says overall the department continues to manage --

MR. LAROSA: I object to reading the contents of the document.

THE COURT: Sustained.

MR. LAROSA: That's contrary to the Court's ruling.

THE COURT: He's answered your question, so let's move -- move on.

MS. GRAY: Thank you, Your Honor. I'll take that back.

MR. LAROSA: Permission to approach.

THE COURT: Yes.

(Inaudible sidebar conference.)

Q. (BY MS. GRAY) Mr. Shorma, you testified yesterday, I believe -- you said you're a warden of the Department of Game & Fish. It's Game & Fish, right? Not [310] Fish & Game?

A. Correct.

Q. Okay. Is it true you're a warden of that department?

A. Correct.

Q. And that makes you a law enforcement officer?

A. Correct.

Q. And I believe you testified that you're actually -- the term you used is peace officer; is that right?

A. Correct.

Q. Okay. So what is a peace officer?

A. Peace officer is someone who's essentially given the authority from the state legislature to enforce the statutes and regulations of the state of Wyoming.

Q. And do you receive -- you received some training, didn't you, from the department regarding what authority you'd been given; is that correct?

A. Correct.

Q. Okay. What kind of training -- or -- yeah, training did you receive on that issue?

A. I attended the same 13-week law enforcement academy that every deputy, patrolman, police officer, highway patrolman attends. We have essentially in-service training every year that we all are required to attend for [311] legal updates.

Q. And you discussed yesterday, I believe, when you went to do the interview with Mr. Herrera up at the Crow Reservation, that -- I believe you said -- you said it, although it may have been that Mr. Ehlebracht said -- that you had no authority there; is that right?

A. We informed Mr. Herrera that we had no authority on the Crow Reservation.

Q. And let me ask you -- so I'm going to hand you a stack of documents.

MR. LAROSA: Permission to approach, Your Honor.

THE COURT: Yes.

(Inaudible sidebar conference.)

Q. (BY MS. GRAY) Mr. Shorma, I'm going to hand you this document which we marked as Defendant's Exhibit 121. Can you take a look at that document (unintelligible).

MS. GRAY: Your Honor, may I have a minute (unintelligible)?

THE COURT: Yes.

Q. (BY MS. GRAY) Are you ready, Mr. Shorma, or -- okay. Can you tell me what that document is?

A. Just essentially an affidavit of probable cause.

Q. In this case?

[312] A. Yes.

Q. So you filed this with Her Honor in this case?

A. Yes. I worked with Mr. LaRosa on this.

Q. Okay. Can you flip to the back, please, where there's some legalese that says further the affiant sayeth not, and there's a signature line there. Whose -- whose signature line is that?

A. It's mine.

Q. It's yours. And you signed that, correct?

A. Correct.

Q. And what's your understanding of when you give an affidavit? Are you swearing under the laws of Wyoming that your testimony in the affidavit is truthful?

A. Yes.

Q. And you understand you're subject to the penalties of perjury if it's not?

A. Yes.

Q. So, Mr. Shorma, this affidavit is numbered in Roman numerals. I assume you're conversant in Roman numerals?

A. Yes.

Q. Okay. You see there III?

A. Yes.

Q. Okay. So as you testified yesterday the charge in this case is for hunting out of season; is that right?

[313] A. His charge?

Q. The charges that Mr. Herrera is facing in this courtroom; therefore, shooting elk out of season; is that correct?

A. His charge is taking an antlered animal during a closed season or without a license.

Q. Okay. Now, you didn't testify yesterday at all about license.

MR. LAROSA: Your Honor, I'm going to object. And I would ask to approach, Your Honor.

THE COURT: All right.

(Inaudible sidebar conference.)

Q. (BY MS. GRAY) Mr. Shorma, you testified yesterday regarding your interview with Mr. Herrera up on the Crow Reservation; is that correct?

A. Correct.

Q. Did you make a recording of that interview?

A. I did.

Q. Did you -- have you listened to it recently?

A. Yes.

Q. How is the audio quality on that?

A. It's got some muffling. At times it's really good and at times it's kind of muffled.

Q. Yeah. It sounds like maybe it's under clothing or something. Were you wearing a wire?

[314] A. It was in my pocket.

Q. It was in your pocket.

A. It was in this pocket of this vest.

Q. That vest.

Did you tell Mr. Herrera that you were taping him?

MR. LAROSA: I would object to the relevance of the question.

MS. GRAY: Your Honor, the relevance of the question is on -- on asking Mr. Shorma who was acting, he's told us, outside of his jurisdiction, wanted to do some follow-up questions regarding did he understand what the law is in the jurisdiction he was making a recording.

THE COURT: Counsel approach.

(Inaudible sidebar conference.)

Q. (BY MS. GRAY) Sorry for the interruptions, Mr. Shorma.

A. That's okay.

Q. Let's get back to this.

So in your testimony yesterday, Mr. LaRosa asked you if Mr. Herrera admitted he was at -- that he knew at the time he was engaged in the act we're all here talking about, whether he admitted he knew he was in Wyoming then, and he expressed some doubts about that. Do you remember that?

[315] A. He -- showing Mr. Herrera the map when we pointed out the position where the elk carcasses were found, we told him you probably knew you were in Wyoming and that the fence was the state line, and he replied, yeah, looking at it.

Q. So what he was saying is you showed him some documents, and at that point he said to you, well, okay. Maybe I was in Wyoming. But he didn't -- did not admit that he knew he was in Wyoming at the time of the shooting of the elk, right?

A. Not during that interview.

Q. Okay. And, in fact, he's never admitted that, has he? That you're aware of.

A. Not to me, but to the --

Q. Okay.

A. -- Billings Gazette --

MS. GRAY: Your Honor, that's hearsay. Objection. It's beyond the scope of the question.

THE COURT: All right. We'll strike the -- disregard the last comment of the game warden.

Q. (BY MS. GRAY) Okay. So in your interview, Mr. Herrera told you that he started hunting in Montana, right? Or actually on the Crow Reservation that day, early in the morning he and his family and friends were in Montana, in the exterior boundaries of the Crow [316] Reservation when they began their hunting trip; is that right?

A. Correct.

Q. Okay. And he also told you in your interview that he never intended to go into Wyoming that day. That's correct, isn't it?

A. I'd have to refer to my notes. I don't recall him saying that.

Q. So are your notes the interview or are they the -- the tape or do you have written --

A. My written notes. Just my written --

MS. GRAY: Your Honor, can we take a moment so he can review his notes?

THE COURT: Sure. He can --

Q. (BY MS. GRAY) Mr. Shorma, did reviewing your notes refresh your recollection on this issue?

A. Yeah. I'm sorry. Can you rephrase the question so I can make sure I answer it correctly.

Q. Okay. So during the interview, Mr. Herrera told you they didn't set out or intend to go into Wyoming; is that correct?

A. Correct.

Q. And you believed him, right?

A. Correct.

Q. And you believed Mr. Herrera when he -- when you [317] interviewed him and you had your discussion that he's not one of the problem poachers you were worried who you're investigating regarding the lopping off of the heads of elk along the Montana-Wyoming border?

A. I'm sorry. I didn't -- that first --

Q. All right. When you -- you, in your interview, you showed him photos, correct?

A. Correct.

Q. And you talked about what you found so frustrating when -- in your investigation regarding those photos; is that correct?

A. Correct.

Q. And those photos essentially show various elk carcasses with the heads cut off; is that right?

A. Correct.

Q. And so the meat was left to rot, essentially, and someone took the heads to do something with the -- with that alone?

A. On some of them. Some had a little bit like the backstraps removed, but it was kind of a mix.

Q. What's a backstrap?

A. Essentially, it's a section of meat that runs along the spine on both sides.

Q. These are the small pieces of meat you can take without the burden that goes into actually field dressing [318] and quartering an elk?

A. I guess it depends on how much you take. It's not a cumbersome -- well, if you take the whole thing, they're probably, I don't know, the length of the elk's back from between their shoulders to their rump.

Q. Okay. So but that's -- well, let me ask you this. Does the -- the department have a law against what -- I think you used the term "waste" yesterday?

A. Correct.

Q. Yeah. What is waste?

A. It's allowing any edible portion to essentially needlessly go to waste.

Q. Okay. So if you take a backstrap only and leave the rest of the animal, is that waste?

A. Yes.

Q. And so -- actually, let's look at that law, if you don't mind, so you can tell me what the definition of waste is.

MR. LAROSA: Your Honor, I would object to this. That is not a statute that is at issue here. And I don't believe it has any relevance to the matter.

THE COURT: I'm going to sustain it as far as the statute. He can generally define it as to what he understands waste to be, but not -- not commenting on the statute.

[319] Q. (BY MS. GRAY) Okay. What do you understand waste to be?

A. As far as like what the -- essentially, we have edible -- what is considered edible portion. It's the four quarters on the front: shoulders to the knee; hind quarters down to hock. It's the meat along the spine, including the backstraps and tenderloins.

Q. Okay. And the head is not an edible portion?

A. That's correct.

Q. Okay. And so in your interview, you actually complimented Mr. Herrera for the work they did. Is it called quartering? What does one do when one dresses an elk in a field?

A. It's called a quartering.

Q. So that's good enough? I can ask you that?

A. Uh-huh.

Q. You complimented him on the quartering and the taking -- packing out of the meat that they did do with these elk; is that correct?

A. That's correct.

Q. And you believe that was done correctly as far as the issue goes, not where he was, but if, in fact, he had had a license and a tag that you considered appropriate, he would have complied with the rest of Wyoming's laws regarding how the elk was taken and packed [320] out.

A. Based on what he said he took. My only question would have been the tenderloins, because there was no evidence that they had been removed from the animal prior to -- prior to my finding it.

Q. What's a tenderloin?

A. Essentially, on the -- there's -- if you look at the animal, the tenderloins kind of lie above the kidneys

on the interior of the -- kind of at the junction of where the rib cage ends and the spine continues towards the pelvis.

Q. And do you have any evidence the tenderloins were not taken?

A. When you cut them out, you cut bone. I mean, your knife will hit bone when you remove them.

Q. And you showed us bone marks --

A. That was on the backstraps. That would have been on the -- let's see -- the other side of the spinal process.

Q. So you and Mr. -- Mr. Herrera had a colloquy in your interview, back and forth, about how important it was to make sure that -- that the meat was used, correct? Do you remember that?

A. Correct.

Q. And you told him I really applaud you guys [321] for -- for, you know -- I understand you're hunting for meat and you took this meat home, and it was a lot of work to get that meat back out of the mountain where they --

A. I believe I told him I applauded -- I didn't say anything about them hunting for meat. I just applaud the fact that they took what it appeared they were supposed to --

Q. Okay.

A. -- under Wyoming law.

Q. So it's true, isn't it, that Mr. Herrera has license or permit to hunt elk on the Crow Reservation? You understand that?

A. To the best of my knowledge, I don't believe a permit is needed if you're an enrolled tribal member.

Q. Okay. You couldn't hunt without a -- a Crow tribal permit legally on the Crow Reservation, correct?

A. You can't hunt elk or deer on the Crow tribal at all.

Q. Okay.

A. There's no permitting system for nonmembers, to the best of my knowledge.

Q. To the best of your knowledge. People do, other than tribal members, hunt on the Crow Reservation, don't they?

A. Antelope and game birds and turkeys and bears, [322] yes.

Q. Okay. And it's licensed by the Crow Tribe?

A. Correct.

Q. Okay. And you understand he can hunt elk legally on the national forest in Montana?

MR. LAROSA: I'm going to object to relevancy to this line of inquiry.

THE COURT: Sustained.

Q. (BY MS. GRAY) Are you aware -- well, I don't think there's been any testimony on that yet. We'll save that for later, Mr. Shorma.

MS. GRAY: I'm sorry, Your Honor. One moment.

Q. (BY MS. GRAY) Mr. Shorma, you testified yesterday that this -- the incident we're here talking about took place on the Bighorn National Forest; is that right?

A. That's correct.

Q. And you received training as a peace officer regarding jurisdiction; is that right?

A. Correct.

Q. What's your understanding of what your authority is within the confines of the Bighorn National Forest?

A. It's no different than -- I mean, it's the same as if I was off.

[323] Q. So --

A. I don't enforce, essentially, Forest Service laws. But all Game & Fish laws I enforce on the Bighorn National Forest.

Q. Okay. So your understanding is you enforce Wyoming laws on federal property, but not federal laws on federal property; is that right?

A. That's essentially correct.

Q. Okay. So if federal law and Wyoming law conflict, what's your understanding and training as to which law essentially trumps the other?

A. Federal law supersedes state law.

Q. So if you were aware of a federal law that allowed Mr. Herrera to hunt at that time, on that day, in the Bighorn National Forest, you would not have written the citation; is that correct?

MR. LAROSA: I'm going to object to the question. It calls for a hypothetical. As much as it's a question, it's irrelevant.

THE COURT: It is also speculative, so it is irrelevant, and that's sustained.

MS. GRAY: I have no further questions. Thank you, Mr. Shorma.

THE COURT: Mr. LaRosa?

MS. GRAY: Oh, Your Honor, I do reserve [324] right to call him back in our case.

THE COURT: He is under subpoena, yes.

MR. LAROSA: Ms. Gray.

MS. GRAY: I'll come get it. Thanks.

REDIRECT EXAMINATION

Q. (BY MR. LAROSA) Mr. Shorma, Warden Shorma, the -- Ms. Gray asked you a series of questions about, I guess, a system in place on the Crow Reservation involving game and fish?

A. Correct.

Q. You -- I'm showing you State's Exhibit 7. I've shown that to you previously, haven't I?

A. Yes.

Q. And that would be the exhibit that Mr. Herrera gave you, is it not?

A. That's correct.

MS. GRAY: Your Honor, Mr. LaRosa has not given me a copy of what he's --

MR. LAROSA: I showed it to you yesterday.

MS. GRAY: Well, I don't have a copy of it.

MR. LAROSA: Well, I can get you a copy.

Q. (BY MR. LAROSA) Just take a moment to examine that document.

MR. LAROSA: (Unintelligible.)

MS. GRAY: Are you going to ask him [325] questions about what's in here? Because I just need to be able to follow along on.

MR. LAROSA: I'm asking him one question about what's in there.

MS. GRAY: Okay. I'll reserve until -- we don't have -- I don't have a copy of that right now, Your Honor, so I'm just going to reserve objection, if I have any, until I can actually see the questions that Mr. LaRosa asks.

MR. LAROSA: And this is the page that -- this was provided to you in email, so you do have it.

MS. GRAY: I'm sure I have something.

Q. (BY MR. LAROSA) This is the booklet that he wrote the email address down and his phone number, correct?

A. Correct.

Q. And if you could examine that document, because this does to some degree the -- the system in place on the reservation, the regulations themselves?

A. Correct.

Q. Is there a part of that document that discusses the responsibility of hunters to know their location on the law?

A. There is.

MR. LAROSA: State would move the admission [326] of State's Exhibit 7.

THE COURT: Ms. Gray?

MS. GRAY: Your Honor, the only real hesitation I have is we actually have an exhibit that is marked

that was introduced to Your Honor earlier in this case that is the official Crow game code. I'm not sure what this booklet is, and so I -- it's --

THE COURT: I'll admit it. It's already been testified -- I mean, the game warden's testified how he received it.

MS. GRAY: Okay.

THE COURT: Where he --

MS. GRAY: Okay. As long as that's the understanding.

THE COURT: And it is a document that speaks for itself.

(State's Exhibit No. 7 received in evidence.)

MS. GRAY: Okay.

Q. (BY MR. LAROSA) The document has a symbol of the Crow Tribe on it?

A. Yes.

Q. All right. Do you see the bolded paragraph where the responsibility of hunters to know their location is contained in that document?

[327] A. Yes.

Q. Can you please read that paragraph?

A. Hunters, it is your responsibility to know where you are, to know who owns the land, to know what access restrictions apply, and to know the location of the exterior boundaries of the Crow Indian Reservation.

Q. Thank you.

MS. GRAY: (Unintelligible.)

Q. (BY MR. LAROSA) You were asked some questions about the fence. Yes?

A. Yes.

Q. To your knowledge, are there practical reasons why sometimes you can't put a fence where it precisely should be?

A. Yes.

Q. Could -- can you explain that?

A. There are many landowners, just due to the terrain or topography, they're unable to build a fence on a property boundary. There's also some instances where I guess there will be variations in the fence to help, at least, like range stock fences to allow landowners an easier time to move livestock into areas -- new pastures or different areas. So they'll have wings and kind of variations in the fence that will allow them to easily, you know, let a horse or vehicle move their animals from [328] one pasture to another.

Q. Okay. The place on the map where you showed the fence is quite a bit away from the border line. Is there a reason why that took place? To your knowledge, just looking at the terrain.

A. From the -- from the -- from how the -- that fence lies, it would be an easy way to.

MS. GRAY: Your Honor, I'm going to object to foundation purpose to this line of questioning.

MR. LAROSA: I'll withdraw that question. I'll take the --

Q. (BY MR. LAROSA) Does any part of your job involve -- do you write the laws or do you enforce them?

A. I enforce them.

Q. When you contacted Mr. Herrera, you were asked some questions by Ms. Gray whether you had reached out to tribal officials as you have to other law enforcement agencies in other jurisdictions, and you said you had done that previously with tribal officials. Do you believe that's what you were doing when you met with Mr. Herrera?

A. That's correct.

MR. LAROSA: May we approach, Your Honor?

THE COURT: Yes.

(Inaudible sidebar conference.)

MR. LAROSA: Those are all the questions I [329] have, Your Honor.

THE COURT: All right. You may step down.

MS. GRAY: You're finished?

MR. LAROSA: Yes.

MS. GRAY: (Unintelligible).

THE COURT: All right. Why don't we --

MS. GRAY: Oh, Your Honor, I had a followup.

MR. LAROSA: I would object to (unintelligible).

THE COURT: You can bring that back -- just subpoena him back.

MS. GRAY: Pardon me?

THE COURT: If you wish to cross-exam -- direct exam, you can do that.

MS. GRAY: This is just a follow-up on one of the questions.

THE COURT: Court procedure is you get one chance at the apple.

MS. GRAY: Oh, so there's no re --

THE COURT: That's correct.

MS. GRAY: Okay. We'll ask him the question when we bring him back.

THE COURT: All right. You may step down. * * * [333] case?

A. Warden Dustin Shorma.

Q. Did you help him with his investigation?

A. Yes, I did.

Q. What did you do?

A. I did several things for the investigation. I helped him locate the sites of the -- where the elk were killed. I assisted in drafting search warrants that we did on Facebook. I conducted interviews with Warden Shorma for suspects in this investigation. And I also collected evidence and took it to the Wyoming State -- to the Wyoming forensic lab in Laramie for processing.

Q. Approximately what time -- when in 2014 did you get involved?

A. Approximately February 2014.

MR. LAROSA: Just one second. (Unintelligible.)

Q. (BY MR. LAROSA) When you became involved, did you become aware of -- show you State's Exhibit 8 -- the photographs taken -- that were found on the Monster Muleys forum?

A. Yes, I did. I was shown these photographs. And I also went to the monstermuleys.com website to view these photographs.

Q. Okay. And did you do any -- before you said you * * *

[337] Q. All right. The -- at any time -- and -- and when the evidence was stored, were seizure tags on them?

A. Yes. We attached seizure tags at the sites. And when we brought them to the regional office, you know, always do that for evidence and chain of evidence, attach seizure tags to them.

Q. All right. On any occ -- did you happen to sign -- sign the six items out of evidence?

A. I did.

Q. And why did you sign them out of evidence?

A. To transport them to the University of Wyoming, our forensic lab, for analysis.

Q. All right. So -- so the -- all three pelvises were taken out?

A. Yes. All three pelvises and all three elk heads were taken out of the freezer. They were packaged up, and then I took them to the -- to the lab personally. I drove them down personally to the lab.

Q. All right. When you did that, did they retain their -- their evidence tag and seizure tag for identification purposes?

A. Yes, they did.

Q. The -- when -- and where is the lab located?

A. It's right at the University of Wyoming campus, in the science building. * * *

[343] that the report?

A. Yes. This is the report.

Q. You testified at the outset that you applied for some Facebook warrants for -- did you say Clayvin Herrera, Ronnie Fisher, DL Singer?

A. Yes. That's correct.

Q. The -- when did you -- let's discuss Ronnie Fisher. When did you apply for a search warrant for his Facebook records?

A. August 21, 2014.

Q. All right. And what period of time were you interested in getting the records from Facebook for?

A. January 1, 2014 up to that date, August 22, 2014.

Q. Does that include the dates when you saw the Facebook posts you identified in State's Exhibits 7 and 11?

A. Yes, it does.

Q. Do you have to apply for a search warrant?

A. Yes, I had to apply for a search warrant.

Q. And who do you apply to?

A. What's that?

Q. Did you --

A. Sorry.

Q. Who gives permission for a search warrant to be [344] executed?

A. A judge --

Q. All right.

A. -- or magistrate.

Q. Did a judge or magistrate give you permission?

A. Yes.

Q. And what procedure did you follow?

A. I followed the procedure for Facebook. You have to submit it electronically to a secure website for Facebook. I have to contact them. Then they may have me electronically send the warrant to them, and then they conduct the search of those records and then provide me a download of those records.

MS. GRAY: What exhibit number?

MR. LAROSA: It will be 31.

MS. GRAY: Okay.

Q. (BY MR. LAROSA) And did you subsequently get the download and examine it?

A. Yes, I did.

Q. How much information was provided in that download?

A. On Ronnie Fisher's -- it was a lot. It was over 500 pages.

Q. Okay. And did you examine the pages?

A. Yes, I did. * * *

[356] THE COURT: All right. And these are basically for offers of proof?

MS. GRAY: To put on offers of proof.

THE COURT: Mr. LaRosa, do you have any objection to both of them just staying in the courtroom while we do this?

MR. LAROSA: No.

[357] THE COURT: Okay.

MS. GRAY: So, Your Honor, would you prefer I put them on the stand and ask them what they're ready to testify to?

THE COURT: Yes.

MS. GRAY: Okay. So we would call Tim McCleary.

THE COURT: All right. Mr. McCleary, come around here to the stand, please. Would you raise your hand to be sworn.

(Witness sworn.)

TIMOTHY MCCLEARY,

called for examination by Defendant, being first duly sworn, testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

Q. (BY MS. GRAY) So would you state your name for the record, please?

A. Timothy McCleary.

Q. And have you filed an affidavit in this proceeding?

A. I have.

Q. And included in that affidavit is a curriculum vitae setting out your experience and your education and your background that you offered as part of why you were [358] available to testify as an expert in this case; is that right?

A. That's correct.

Q. Okay. So one of the things that you discussed in your affidavit is oral history of Indian peoples; is that correct?

A. Yes.

Q. And you discuss in there that oral history is a reliable source of information; is that correct?

A. That's correct.

Q. Okay. And -- so if you were allowed to testify today -- well, let me back up.

You're aware that there's oral history regarding the dispute about the liability or the accuracy of the measuring of the southern border of the Crow Tribe?

A. I am aware of that, yes.

Q. Okay. And so if you were allowed to testify here today, you would offer evidence regarding the reliability of such oral history?

A. Yes, I could.

Q. And you're otherwise available to testify consistent with your affidavit that's on file with the Court?

A. Yes.

MS. GRAY: I think that's it for [359] Mr. McCleary, Your Honor.

THE COURT: All right. Do you have any questions at all you want to ask?

MR. LAROSA: No, Your Honor.

THE COURT: All right. Thank you. You may step down.

THE WITNESS: Thank you.

THE COURT: And just for the record, as to the affidavit of Mr. McCleary, the Court's already ruled that the affidavit does not have any relevance as to the issues of fact in this case. Thank you.

MS. GRAY: We understood that, Your Honor.

THE COURT: Yes. I'll just make it clear. * * *

[371] document that Mr. LaRosa --

MR. LAROSA: Can we do this at sidebar, if it's going to be extended?

MS. GRAY: It's not going to be. Just a statement of fact. And what we suggest, for clarity and fairness, the entire statement of the facts be put in, Your Honor.

THE COURT: And, again, that objection is overruled and the pertinent amount of information is relevant. The remainder of the information contains irrelevant information.

MS. GRAY: And we would also like to renew our foundation objection.

THE COURT: Right. So noted.

32 will be admitted.

(State's Exhibit No. 32 received in evidence.)

REDIRECT EXAMINATION

Q. (BY MR. LAROSA) Mr. Adell, I'm going to give you State's Exhibit 32. I'd like you to turn to page 10. I would like you to read everything on page 10 and 1 that you can.

A. Statement of the facts. Herrera is an enrolled member of the federally recognized Crow Tribe. He resides at St. Xavier, Montana, which is located on the Crow [372] Reservation. In January 2014 Herrera, a deputy game warden for the Crow Tribe, and several other tribal members decided to hunt for elk on the Crow Reservation lands, intending to return with meat to help feed their families over the winter months. Petitioner and his fellow tribal hunters

spotted several elk on the reservation in the vicinity of Eskimo Creek and tracked them on foot through the snow. At some point elk, with the tribal hunters in pursuit, apparently crossed over the Montana-Wyoming border and into the Bighorn National Forest. Three elk were shot, quartered and packed out of the mountains on the backs of the tribal hunters, who later distributed the elk meat among their families and other tribal members.

You want me to continue with the other parts?

Q. Just to be clear, if there's anything else, please read it.

A. It's on page 11 now. Okay. Some of these facts are not in the record. Herrera certifies that if such a hearing were to be held, these facts would be established. While Herrera is not certain the elk were shot in Wyoming rather than on the Crow Reservation, for purposes of his appeal, he does not contest that the elk were taken on the Bighorn National Forest.

MR. LAROSA: I have no more questions at * * *

[388] THE COURT: Thank you. Be seated.

Ms. Gray.

MS. GRAY: Thank you, Your Honor.

We -- the defense would recall Mr. Shorma to the stand.

THE COURT: Okay. You're still under oath.

DUSTIN SHORMA,

called for examination by Defendant, having affirmed, testified further as follows:

DIRECT EXAMINATION

Q. (BY MS. GRAY) Welcome back, Mr. Shorma.

A. Good afternoon.

Q. So I've just got follow-up questions from your testimony earlier. So after you testified you had the interview of Mr. Herrera up in the Crow Reservation, you issued two citations; is that correct?

A. That's correct.

Q. Okay. And one of the citations you issued was for aiding and abetting; is that correct?

A. That's correct.

Q. Okay. And you charged that because Mr. Herrera helped pack out the other elk, the meat of the other elk that he did not shoot, correct?

A. I guess if I answered one way or the other, it wouldn't be completely correct. Mr. Herrera not only [389] helped, you know, pack out the meat, but he also facilitated the hunt. He was kind of the organizer to bring everybody together to hunt.

Q. So where did that facilitation you just described occur?

A. In talking with, you know, other individuals that were hunting with him, it was a -- a text message.

Q. And it happened on the Crow Reservation, correct?

A. The text message?

Q. That the -- the conduct of sending the text message were -- otherwise con -- contacting the others to go on a hunt happened on the Crow Reservation.

A. I don't know. I don't know where he was when he sent the tex

Q. Okay. Did you see a text message?

A. I did not.

Q. So other than -- than that, which you said bringing the party together, is there anything else that supports the aiding and abetting citation that you wrote?

MR. LAROSA: I will object. I believe this calls for a legal theory of guilt here. That's inappropriate.

THE COURT: Sustained.

Q. (BY MS. GRAY) Let's see how I can ask that.

[390] So at the time you write a citation, you know what you're thinking, why you're issuing that citation. I mean, you decided in your mind it's appropriate, under your understanding of your authority, to issue a citation; is that right?

A. Yes. Citations are issued based on probable cause.

Q. And they're charging documents, like -- well, do you know what a charging document is?

A. Yes.

Q. Okay. And so is a citation a charging document?

A. Yes.

Q. And those are the charging documents at issue here. There's no information or indictment or anything of that nature; is that right?

A. That's correct.

Q. So what you thought at the time was that it was appropriate to issue a citation for aiding and abetting because Mr. Herrera brought the hunt party

together. I think your term was facilitated the hunt at the start of the day -- or that -- the evening before. And then that he helped pack out -- so possessed and transported the elk out from where they were shot?

A. He was an active participant in the taking of the elk as well as the packing out.

[391] MS. GRAY: Okay. May I have a moment, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) So, Mr. Shorma, you talked about a text message. And just to be clear, did Mr. Herrera say anything in his interview about a text message?

A. No.

Q. So -- and you never saw a text message?

A. That's correct.

Q. And so you're not aware of any evidence or information that there was anything in the text message saying let's go to Wyoming to hunt?

A. That's correct.

MS. GRAY: That's it, Your Honor. Thank you.

THE COURT: All right.

MS. GRAY: And we release Mr. Shorma.

THE COURT: Okay.

MS. GRAY: He can be released from his subpoena as well.

THE COURT: Just a moment. Any cross-exam?

MR. LAROSA: I have some cross-examination.

THE COURT: All right. We'll allow some.

MR. LAROSA: Thank you.

CROSS-EXAMINATION

[392] Q. (BY MR. LAROSA) When you -- I want to discuss what you mean by an active participant. Based on the information Mr. Herrera told you. Did he acknowledge that the individuals he named as being with him were with him on a hunt?

A. Yes.

Q. All right. And did he -- in his statements to you, isn't it true that he basically told -- described to you the process of how they got where they were, followed the elk, went together in places and collectively engaged in shooting at elk?

A. Yes.

MR. LAROSA: Thank you. Those are all the questions I have.

THE COURT: You may redirect based on this.

MS. GRAY: That's it for us, Your Honor. (Unintelligible.)

THE COURT: All right. You may step down.

Your next witness.

MS. GRAY: Your Honor, may we approach a minute?

THE COURT: Yes.

(Inaudible sidebar conference.)

THE COURT: Ladies and gentlemen of the jury, at least you're getting your leg exercises this * * *

[395] Ms. Gray, call your next witness.

MS. GRAY: Thank you, Your Honor. We'd call Mr. Clayvin Herrera.

THE COURT: Mr. Herrera, raise your right hand.

(Witness sworn.)

CLAYVIN HERRERA,

called for examination by Defendant, being first duly sworn, testified as follows:

THE COURT: Please be seated. And as you know, watch the chair.

THE WITNESS: Yeah, watch out for the chair.

DIRECT EXAMINATION

Q. (BY MS. GRAY) Mr. Herrera, can you state your name and address for the record, please?

A. Clayvin Herrera. I reside at 60 Soap Creek Ditch Road, St. Xavier, Montana.

Q. And is St. Xavier, Montana on the Crow Reservation?

A. Yes, it is.

Q. So, Mr. Herrera, you've been sitting, listening to testimony about you. Now is your chance. I'm going to ask you some questions to try and facilitate you telling your side of the -- what happened here to the jury. Okay?

[396] So, first, tell us about your educational background.

A. Got some college out of the way at the University of Wyoming. And I guess would education be training on the job, I guess?

Q. Sure. We can get -- so you're -- what did you study at the University of Wyoming?

A. Major in criminal justice and minor in American Indian studies.

Q. Okay. And did you get your degree?

A. No, I didn't.

Q. And why did you stop short of your degree?

A. I started a family.

Q. Okay. And is your -- does -- tell us about your family.

A. Well, it consists of me and my three girls.

Q. Are your three girls in the courtroom?

A. Yes, they are.

Q. You want to point them out?

A. We've got Sharrell on the left. Andrea, we call her Toots, in the middle. And Brianna on the right, but she goes by Nanna.

Q. And who's that sitting next to Brianna?

A. My mother back there. Cheryl.

Q. Okay. Is your sister there too?

[397] A. I can't see. Yep. There she is. My sister Adrienne. And my other sister Brenna.

Q. One of those sisters was the one who appears in the exhibits?

A. Yeah.

Q. Let me get that exhibit.

A. I'm surrounded by girls.

Q. So State's Exhibit -- State's Exhibit 8. Look at that. Is that your sister on the last page of that exhibit?

A. My sister on the last page, yes. It's kind of amazing, because she's a horrible shot. So it's like she

-- not only was it kind of decent, but she actually killed something.

Q. Okay. All right. So you started a family. What happened next in terms of your job history?

A. Well, it was about '05, and I got a job as a game warden for the Crow Tribe. The director asked me -- he just walked up to me and said, "Would you like to be a game warden?"

I was working at the Casino I think at the time. And I was like, "Yeah. When do I start?"

He said, "You can start tonight, but you have to stay up there for two weeks."

I was like, "Let's go."

[398] Q. Let me stop you. Stay up where?

A. Stay up in the mountain.

Q. Okay. The Bighorn Mountains?

A. Usually it's called second checkpoint, up in the Bighorns. That's kind of where families stay, game warden. There's like a cabin there. It's just kind of our rendezvous point.

Q. Okay.

A. And from there, couple months later, I went to the police academy. I have to be certified within a year. So I actually went to South Dakota and I got certified there. Came back, got certified in Montana. And then I transferred over to police department, and I was a police officer for a while. Then I turned to drug investigator. And from drug investigator, I went -- actually got deputized by the FBI and was on the Safe Trails Drug Task Force for little over a year. After that, I was with the DEA for a while. Transferred to

their -- their drug task force. And I -- then I was in charge of Major Crimes Act federally, as a CI. So like 18 U.S.C., 21 U.S.C., all that stuff. And --

Q. What -- let me stop you for a minute. What's the Major Crimes Act?

A. Major Crimes Act is -- it's basically crimes that we can pursue federally on the reservation.

[399] Q. So there are -- you mean -- when you mean pursue, you mean prosecute?

A. Prosecute. Work cases. And as a CI, we really didn't work anything through tribal court. Everything we did was through federal court, so I had --

Q. What's a CI?

A. A criminal investigator.

Q. Okay. And the Major Crimes Act, there's -- is there also part of that act that gives exclusive jurisdiction over certain crimes to the United States?

A. I believe so.

Q. And so you've had experience in federal court, I think you were saying.

A. Federal, State and tribal court. Right. I had three jurisdictions and capabilities to prosecute in those jurisdictions at the same time.

Q. Okay. So tell us the -- the moving forward. What did you do next in your job history?

A. Well, I got a lot of my training from the FBI. Did FBI crime scene, FBI meth lab, FBI interview and interrogation, the Reid techniques, just kind of different ways of doing stuff, FBI SWAT tactics, you know, dynamic entry, stuff like that. Kind of a lot of stuff, just kind of trained me up and just kind of set

me free. And I just, you know, did -- did what I could where I could. [400] But having three little girls and doing that stuff is kind of hard, you know, when you're -- you're on call 24/7 as a CI, someone dies, someone gets stabbed, you've got to jump up and go to the scene, so -- I think they were all in Pampers at the time, and I just decided that I would go somewhere else. It was just taking on too much -- too much bad from the res, I mean, and trying to take care of family at the same time. Like the old guys would be talking about they didn't see their kids grow up and stuff, so I didn't want that.

So I got out of that for a bit and got back in as a game warden in 2012. I worked up to lieutenant. From lieutenant I went to captain. And as captain, I started kind of changing the mindset to conservation on the reservation. Like we're doing cutthroat trout. We had one of the only species of 100 percent genetic native cutthroat trout. Yellowstone cutthroat trout. And we -- we go down, we take those out. They go to the hatchery. Some come back and other people get them that need them.

And we just did the greater sage grouse project last year. I don't know if people know --

Q. What's that project?

A. The greater sage grouse. They were going to be enlisted, but they weren't quite sure, into endangered species. So the way that affected us was with coal and [401] our mineral rights and stuff. So we had to get a survey done. We had to do a protection plan. And then we had to pass it into law in the legislature. And we did that last year. It was kind of a lot of work.

And at the same time, because they're kind of in the same area, and it was kind of, you know, not too -- whatever that saying is, but we had black-footed ferret program start up. We started mapping prairie dog towns, working with U.S. Fish & Wildlife.

Q. Let me stop you there. The black-footed ferret. Is that an endangered species? Actually, I'm going to ask you this first. So in your work, you worked with the Endangered Species Act?

A. Endangered Species Act, yes.

Q. Okay. So what about the black-footed ferret? Is that an endangered species?

A. It's an endangered species as far as I know. There was eight left in the world, and U.S. Fish & Wildlife Services actually collected them. And I think they're based in Colorado. And they started breeding them in captivity. And we busted our butts. Even the girls helped. And we actually qualified to get 30 ferrets last year in October. So me and the girls and a couple of the volunteers and U.S. Fish & Wildlife, World Wildlife Fund, APHIS, USDA, we all went out and released them back into [402] the wild where they belong. And they're also sacred -- the black-footed ferret is sacred to the Crow. And it's one of the songs sung in the Tobacco Society, for women. So it was kind of good thing to do for one, and also culturally significant for us to bring it back.

And, unfortunately, there's only probably like five left alive, most likely. But every year we're going to get 20 more, and just keep releasing them until they kind of get a foothold and take off again.

Now we're starting like swift fox -- swift fox stuff and -- I can't remember. Something else too.

Q. Well, let me take you back to one of the things you said about why you went back to the Fish & Game Department from more intensive law enforcement.

So you talked about your -- your girls. Are you a single father?

A. I'm a single father. And it's kind of tough finding babysitters and stuff, but working at Fish & Game, they can come out with me and -- my office is outside. My office is the world, and I can show them around, talk about stuff, long talks and just, you know, I'm the only one that really takes care of them. And when they're beside me, I don't really have to worry about where they're at, or babysitters or -- I can just get my job done. And they actually help out a lot too, so...

[403] Q. So they're pretty important to you?

A. Yeah.

Q. So you -- do you base a lot of the things you do -- you think about your girls first?

A. Yeah. Pretty much have to. And kind of (unintelligible), so...

Q. Okay. All right. So let's continue with what you're saying about your job duties.

A. We do -- I mean, I can't think of the other -- my mind's kind of mush right now. But like we also do special forces training. In Black Canyon we do -- Seal Team 6 was here this past summer, and we do like parachuting. They do steep incline/decline shooting, long-range, stuff like that. And we just kind of

facilitate stuff like that. And kind of secretly, don't tell anybody, but we work with private military contractors from the East and they come and it's -- it's pretty neat. So I kind of knew they were heading out somewhere before everyone else did, so...

Q. Okay.

A. I can't really say too much about it.

Q. Sure. Don't breach your confidence.

So I think you -- you mentioned a little with the -- the -- I'm sorry. The grouse. What kind of grouse is it?

[404] A. It's called the greater sage grouse.

Q. Okay.

A. And it's the -- they're like that big. They go in these places called leks, and it's the breeding ground. And it's like a circle and they puff up and, you know, they try to punk each other out. They kind of dance and stuff. It's also part of our culture, because some of our dancers imitate birds. Some of them imitate the -- at the powwows, they imitate maybe the sage grouse, maybe the sharptail. Sharptail likes to shuffle its feet a little bit.

Q. Uh-huh.

A. And some guys like to do that. They call it chicken dancing. But like every animal out there is actually important to us and may have a meaning and they're kind of all placed -- in our way, we're no better than the animals. God put them here equally as us, so -- and we have to take care of each other. And, I mean, we come from a culture where living outside and outdoors and with the animals and living in harmony

with them is actually a necessity, number one. And it goes into religion and it just ties in a lot of different ways.

Q. So you mentioned something about a Tobacco Society. What's that?

A. I -- I haven't really -- I don't think I would [405] have the qualifications to talk about it. Someone like my mother would. She's a member. And I -- I can't really delve into it.

Q. So it's something that's a female rather than a male thing?

A. No. It's -- it's male and female. It's just what I was referring to earlier was one of the songs sung about a female, about -- a sacred song. It has to do with black-footed ferret.

Q. Okay. But do you know enough to talk about the type of tobacco that is meant? Is it tobacco like meant in a cigarette or something different?

A. No, it's -- well, we were put -- the reason why we were here is the creator put us here by giving one of our ancestor chiefs some sacred tobacco seeds. And our -- our tribe actually wandered for years and years trying to find the place where it would take root, and it took root in the Bighorn Mountains. That's the reason why we're here today.

And they also say, you know, well, we'll always have the Bighorn Mountains. And it's -- it ties into history.

Q. But do you know the story of Big Metal?

A. Yeah. I'm familiar with the story. I don't want to mess it up and ruin a detail or two. You know, [406] it's --

Q. So it's essentially the -- the story of a young Crow boy after the Crow have come to the Bighorn Mountains because of the sacred tobacco, who gets lost in the wilderness and is rescued by some bighorn sheep?

A. Yeah.

Q. And one of them is named Big Metal because he's got metal hanging off of his --

A. Yeah. Seven sheep. One was Big Metal.

Q. Okay. And as I understand this story, part of what happened was this -- this young boy who is sort of the -- one of the members of your tribe, was rescued by the bighorn sheep who told him a couple of prophecies that are important to your tribe. Is that right?

A. Something like that.

MR. LAROSA: Your Honor, I would object to the leading nature of the questioning. And -- and to it's -- it's not relevant to what we're here for.

THE COURT: It is sustained. If you have questions, would you please ask questions of Mr. Herrera --

MS. GRAY: I will, Your Honor.

THE COURT: -- instead of leading and telling a story.

MS. GRAY: Okay.

Q. (BY MS. GRAY) So does part of the story have to [407] do with the name of the mountains and the river?

A. I believe so. As long as -- as long as it's called the Bighorn Mountains and the Bighorn River, there will always be Crows around.

Q. Okay. And when you say "Crows around," you mean members of your tribe?

A. (Unintelligible), yeah.

Q. So can you tell us -- so is Crow -- and it's an English word. We all know it. It's a big black bird. How did that come to be the name of your tribe?

A. It started as children of a large-beaked bird, and it was just kind of lost in translation. They thought it was -- they picked a big bird with a big beak and it was a crow and they called us Crow, pretty much.

Q. Okay. So it was not natives who gave you that name?

A. No. We -- it was (unintelligible), you know, our side, so...

But, yeah, Crows is a European term.

Q. Okay.

A. That's just -- we got to use it to speak English, so...

Q. And did you grow up speaking Crow?

A. My first language was Crow until first grade. I had to learn English to do good in school.

[408] Q. Okay. So part of what you were telling us about -- with the -- the grouse was that you had to --

you had some involvement with the survey; is that right?

MR. LAROSA: Again, I object to the leading nature of this questioning, And to its relevance to this proceeding.

THE COURT: Sustained.

MS. GRAY: On which ground, Your Honor?

THE COURT: Both.

MS. GRAY: Okay.

Q. (BY MS. GRAY) Okay. So, Mr. Herrera, you heard Mr. Shorma's testimony, correct?

A. Yeah, I did.

Q. Okay. So one of the things he talked about was how important it is for a -- a game warden to know his district.

A. Yeah. I heard him say that, yeah.

Q. You remember that?

A. Yeah.

Q. Yeah. And are you -- have you looked at the -- the map that was put in regarding -- when Mr. Shorma testified about what his district was?

A. I seen it, but I didn't -- I didn't identify the district --

Q. Okay.

[409] A. -- personally, so...

Q. Let's take a look at that exhibit.

I'm handing you what has been marked as State's Exhibit 5. Have you seen that?

A. Yes, I did.

Q. Do you remember, from listening to Mr. Shorma, what district he was talking about?

A. I believe he said 38.

Q. Hunt District 38? Can you tell how big that is, acreagewise?

A. I could guess, you know, it wouldn't be --

Q. As a general idea. Ballpark figure.

A. Oh, I would say it's probably 280,000. I don't know. Maybe 50,000. I don't know.

Q. 50,000 acres?

A. 50 to 200,000, just the scale is --

Q. All right. Something in that -- in that general vicinity?

A. Yeah.

Q. How many acres are in your jurisdiction?

A. 2.2 million acres.

Q. Okay. So one of the things that Mr. Shorma suggested was a game warden has to really know with certainty his district.

A. Yes.

[410] Q. Is it possible for you to know with certainty 2.2 million acres?

A. I'm trying, but -- and every year you learn new stuff, and I still probably haven't hit every single place on the reservation. And I've been, you know, living on the res a lot. And we have three mountain ranges. We got a couple of valleys, and we got, you know, foothills. I mean, we got everything from mountains down to plains down to pretty much everything. And it's thick in foliage. Sometimes -- I mean, summertimes, you

can't even get to some spots, unless you want to get ticks and bit up by mosquitos or scratch up your truck, things like that.

Q. So when you listened to the testimony about where the State alleges that the shooting took place -- and let me ask you this. You don't disagree that you shot the elk in question, do you?

A. No. I got it and ate it.

Q. You got it, you shot it and you ate it, right. Okay.

So this dispute's over something else and so -- and then that area where you went hunting, had you hunted there before?

A. I believe that was my first time hunting in that area. Dry Ridge, Horse Ridge area.

Q. Okay.

[411] A. Big -- yeah, they call it Eskimo Creek. But we kind of go by -- we go by different things, you know. We're two different cultures. They have their way of explaining things or judging things. We have our own way of doing things. And we have different names and -- and I don't know if we even call areas in our mountains by the road names or stuff like that. We go by landmarks, by sacred sites, you know, things that have been passed down. So it's just -- it's two different worlds we're in and we've got to try to do good at both of them, so...

Q. Okay. So there was some testimony when Mr. Shorma came back on the stand here about a text message. Let me ask you, how -- how did the hunt get arranged?

A. Well, we were all Crows, and it's not like we're guiding each other, or, you know, showing each other. We just, you know, we sit -- I think -- I thought we planned that one face to face, like who wants to go? You guys want to go? All right. Let's go out. I wasn't even driving a vehicle. I was a passenger in a vehicle. But, I mean, the way we hunt, collective thinking, collective opinions, and we kind of hash things out, and just kind of -- no one leads it. I mean, people -- I mean, there's common tactics that everyone will use and you just fall in, I guess. It's just natural. It's not planned.

[412] Q. So was the hunt planned with the intent to go into Wyoming?

A. No. And I don't even think it was my idea. I can't even remember. It was someone in the other truck. Because there was two vehicles, I believe. And when we started -- yeah, there's no plan of going to Wyoming.

Q. Okay. So let's go back, then, to this -- the day that Mr. Shorma -- well, actually, let's --

MS. GRAY: May I approach, Your Honor?

THE COURT: Yes.

(Inaudible sidebar conference.)

Q. (BY MS. GRAY) Mr. Herrera, do you need some water up there?

A. Yeah, I could use some water.

MS. GRAY: May I, Your Honor?

THE COURT: Yes.

A. That's out, though. I drank that up.

Q. (BY MS. GRAY) is this the one that dumps on -- oh, it's out?

A. There's nothing left.

Q. (Unintelligible.)

MS. GRAY: Thank you.

Q. (BY MS. GRAY) So, Mr. Herrera, I put in front of you the exhibits -- State's Exhibits 8, 11 and 10. Let's talk about 8 and -- so (unintelligible) Shorma [413] talked regarding no tell 'em ridge. You remember that testimony?

A. Yes. Yes, I do.

Q. And that Mr. Singer talked about don't tell ridge, do you remember that?

A. Yeah, I remember.

Q. Okay. So have you ever heard those terms before?

A. I -- yeah. In various ways. Like he said, you know, no tell 'em creek, no tell 'em ridge. Variations of don't tell them, stuff like that. It's just a common -- common thing for hunters. Actually, there's people that will steal your spot and ruin it, so people don't want to share where they're getting their game. And it's kind of just, I don't know, common -- common not to tell, really, I guess.

Q. So well before this dispute, you yourself had used those terms or similar terms?

A. Or had them used on me, yes.

Q. Okay. So -- so back to the day -- actually, let's -- let's go through the rest of the day of the hunt.

So we -- you heard Mr. Shorma give his testimony of what you told -- he says you told him when he interviewed you. Do you remember that?

A. Yeah.

[414] Q. Okay. So what I'd like you to do now is -- is tell the jury what happened on the day of the hunt.

A. On the day of the hunt, we -- when we hunt elk, for me, the best luck is at very first light. The very first light is kind of crucial to successful hunts. So we've got to be out there just before first light, so we planned maybe leaving 4:00, 4:30, rounding up -- I think it was me, Colt -- baby Colton, Colt's truck, Colt picked me up. And early the day before, I think we planned on meeting on Red Grade somewhere, and just start glassing. Start glassing up onto the face and --

Q. Start what?

A. Glassing.

Q. What's that?

A. Get the binos out, scopes out, just start -- start searching and looking.

Q. Okay.

A. Find -- find your game.

Q. So where you were looking at --

A. Yeah.

Q. -- was that within the Crow Reservation?

A. Yes.

Q. Okay. Continue.

A. Started glassing, and we spotted maybe a couple hundred cows feeding, some bedded. They weren't spooked [415] or anything. And up on Dry

Ridge, and there's -- I think it was Dry Ridge or Horse Ridge, but there was a bull there. And the snow is pretty deep. I think one truck had four chains in the back ready to go. One truck had two. I'm not sure. Someone didn't have enough chains. But we made it to the bull -- almost to the bull. And then the plan was to get out and hike to the ridge, into the trees, and then just kind of get up on them and --

Q. So is Dry Ridge within the exterior boundaries of the Crow Reservation?

A. Yes, it is.

Q. All right. So let's talk about snow for a minute. So this happened in the -- well, the -- the 2014 portion of the winter of 2013-2014; is that right?

A. Yeah.

Q. Okay. Do you remember that that year?

A. That might have been our last really good winter. I'm not sure. I think we did a lot of snowmobiling that year too. I'm not sure. But there was like two to three feet of snow in some places, and just taking a step was kind of tough. Especially you step uphill just --

Q. Kind of sink into the snow?

A. Yeah, sinking in the snow. It saps your energy. I mean, it -- it was -- but, you know, we pretty much had [416] to. It was -- it was a meal seal -- meal seal kind of day.

Q. What do you mean by that?

A. That was a time when the tribe was in recession bad. And they cut our hours. They cut our pay. I was cut down to like 32 hours a week. They cut

me down to like $10 an hour. That's like less than 400 bucks every two weeks. And growing kids, they eat -- they eat more than me now, but I had to give -- the plan was to get an elk to -- to eat it. Live off it. And --

Q. Do you eat -- do you feed a lot of elk to the girls?

A. Yes, I do. We -- maybe 30, 45 days out of -- every winter we're eating elk in various ways. We're eating elk summer sausage, along with deer. And -- it's just our -- our diet. It's better on our stomachs. We're not used to the sugars and fructose corn syrups and all that crazy stuff. And the European diet that they have now, and just there's -- I mean, it's obvious with high diabetes rate with the Native Americans and -- it's just -- I think it's healthier for my girls. I mean, you can see growth spurts, I mean, when they're eating elk meat and buffalo and whitetail. And it's just -- to me, it's better on our stomachs and our digestive systems.

Q. So your girls think you're a pretty good cook?

[417] A. I hope so. Yeah, I think they do. I'm the best cook ever, probably.

Q. Okay. So how many elk do you take a year?

A. Average, two, three, maybe. And even if that. Sometimes there's a high poverty rate on the reservation. We have a lot of family members. We have a lot of relations. When we come back from a hunt, a lot of people are --

MR. LAROSA: Your Honor, I'm going to object to these. He's going into a narrative beyond the question.

THE COURT: Sustained. You'll need to ask your -- ask and answer questions.

MS. GRAY: (Unintelligible.)

Q. (BY MS. GRAY) Okay. And that's -- okay. And that's pretty much every year that's pretty common for you?

A. Average, yeah.

Q. Okay. So have you ever been -- let's see how to phrase this. Has anybody ever suggested you took those elk anywhere other than the Crow Reservation?

A. No. They wouldn't be able to.

MR. LAROSA: Object to that question. It's irrelevant and completely misleading of the issues.

THE COURT: Sustained.

[418] Q. (BY MS. GRAY) So have you hunted for elk somewhere other than on the Crow Reservation?

A. Me and my brother go to Ennis every year. We haven't the past year or two. But for about 10 years we used to hang out with his buddy, stay down in Park, Idaho snowmobiling and going to Ennis and doing some hunting for some elk.

Q. So far on the northern --

A. West --

Q. West -- to the west.

A. Border of Idaho.

Q. Okay. With Montana.

And when you go do that hunt, do you buy a -- a tag?

A. Yeah, we buy a tag. It's a little awkward. You buy the tag. And then the first time I bought a tag, I thought of myself as a seasoned hunter, and I bought the tag and they were looking at me like I didn't know how to hunt. And then has to wear like orange and --

it was just weird. The way they hunted over there, I didn't like it. They like surrounded the elk in like this square fence and just --

MR. LAROSA: Your Honor, I'm going to object again. This is more narrative answers after the question's been asked.

[419] THE COURT: All right. Let's just move on.

Q. (BY MS. GRAY) So there you believed you were outside of the -- the area where you could hunt legally as a -- as a member of the tribe, and so you bought a tag?

A. Yeah. We were outside the reservation, and our ancestral hunting grounds. So in Idaho, tag's the way to go.

Q. Okay. All right. So back to the day in question. So you glassed the -- let me ask you another follow-up question then.

So when you go -- when you've gone in the past to hunt and did get meat for the girls, have you ever had a problem finding an elk inside the exterior boundaries of the Crow Reservation?

A. No, I have not.

MR. LAROSA: Again, I'm going to object to the relevance of the line of inquiry. It is not directed in any way to be (unintelligible).

THE COURT: Your response --

MS. GRAY: Your Honor, I think it goes to the ability to find elk on the reservation, and some of the implications that maybe there was an intent to go to Wyoming.

THE COURT: I'll overrule the objection.

Q. (BY MS. GRAY) So you had no problem finding elk [420] to get meat for the girls within the boundaries of the Crow Reservation?

A. No problem at all.

Q. Okay. So this elk herd that we've all been -- been hearing about, do elk know what boundaries are?

A. No.

Q. And -- so then do they go back and forth between the Bighorn National Forest and the Crow Reservation?

A. Yeah. Elk are a migrating animal.

Q. Okay. And the elk that was shot -- actually, the three elk that the testimony's been for were shot on the day in question, where did they start out in the day?

A. I think they were bedded there the whole time. We didn't see them. The cow -- because that time the cows kind of separate from the bulls, and the bulls that are with the cows would probably be like spikes and rags and small stuff.

Q. Okay.

A. And they are -- they are just too fast. And we found ourselves right beside them out of nowhere. We were so focused on the herd in front of us we didn't even see it, and they were sleeping.

Q. So that was on the Crow Reservation?

A. I believe it was.

Q. Okay. Okay. So you see the elk. You start [421] going after them. Did they run?

A. No. They didn't -- I think they were napping, sleeping. They -- they didn't run. They just dropped -- kind of dropped them where they laid, like colts. They ran a little bit, but it was pretty -- it was -- it was a good hunt. It was a good day.

Q. Okay. So when you pulled the trigger to take your elk, where did you believe you were?

MR. LAROSA: Your Honor, I'm going to object to the -- I think that his belief is irrelevant.

THE COURT: That's sustained.

MS. GRAY: Your Honor, I think our response to that is -- may we approach?

THE COURT: Yes.

(Inaudible sidebar conference.)

MS. GRAY: May I have a moment, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) So, Mr. Herrera, you talked about the snow cover. And can you tell me how -- how deep the snow was in the area where you were pursuing the elk?

A. It was average from height -- high on my calf to some places my waist.

Q. Okay. So if there were any border markers in the area where you were doing the hunt, would they been visible?

[422] A. Not in that kind of snow.

Q. And did you see any border markers that said State of Wyoming or Bighorn National Forest or anything of that nature?

A. During the hunt, no.

Q. Okay. And there was some testimony from Mr. Shorma about the Marble Quarry Road and -- here let me -- let me look through the exhibits.

Mr. Herrera, I'm handing you what has been marked as State's Exhibit 16. Do you remember Mr. Shorma testified about that exhibit?

A. Yeah. I remember him talking about this.

Q. So looking at that exhibit, was that taken in the same conditions that existed at the time you were engaged in the hunt in question?

A. No. Not even close. It's dry.

Q. So what's the difference?

A. It's dry here. You can see all the rocks. You can see, you know, the landscape, everything. The day we hunted, you know, it's covered in snow, and snow hides a lot of stuff. Rocks, potholes, little drops -- drop-offs and stuff like that.

Q. Okay. And there was some testimony regarding you stopped and you parked the truck because there was too much snow to move on. Did you ever get your trucks [423] anywhere down near Marble Quarry Road?

A. No. We didn't even -- we weren't on Marble Quarry Road. We were up -- I guess the turnoff would be here. The Marble Quarry probably turned off up here, further up on top of it, that's adjacent to the ridge there.

Q. So did you see anything like -- I'm sorry. What's the exhibit number?

A. 16.

Q. Anything of the nature of that exhibit?

A. No.

Q. So while you were on the hunt, as you went in -- as you're -- you're focusing in on the elk that you're going to shoot, did you see anything that was posted or indicated that you were entering the state of Wyoming?

A. No.

Q. Mr. Herrera, when you shot the elk in question, were you in Wyoming?

A. No.

Q. Okay. So now I want to take you back to an issue of your job duties. So did you have any -- were part of your job duties to look into this --

MS. GRAY: Your Honor, may we approach on this?

THE COURT: Yes.

[424] (Inaudible sidebar conference.)

Q. (BY MS. GRAY) Mr. Herrera, (unintelligible). State's Exhibit 8, can you read the top of -- the text on the top of there?

A. The title?

Q. The whole -- the text on top of the photo.

A. Good year on the Crow Reservation. Good year on the Crow Reservation. Photo provided by Clayvin Herrera. Clayvin Herrera scored quite well. Top two photos. As did Ronnie Fisher, Clayvin's nephew, Colton, Jr., and sister Adrienne, bottom photo. It was a good year on the Crow Reservation in Montana.

Q. Okay. And so you posted that on -- I think the website's called Monster Muleys?

A. Yeah. I post every year.

Q. What is Monster Muleys?

A. monstermuleys.com?

Q. Well, what's the website?

A. Yeah, it's -- it's affiliated Muley Crazy Magazine. And I've got some buddies that are Muley Crazies and Monster Muleys. And when we get something good, we usually send it to each other and I throw it on the -- I throw it on the Monster Muleys.

Q. So Mr. Shorma said something in his testimony about when he first looked at it, he thought you were [425] trophy hunting. Are you a trophy hunter?

A. I am a hunter. And by nature and if I had to categorize myself, I would mostly get meat. Can I get a trophy? Most likely. I think I'm pretty good at what I do. And I think I've been hunting -- like my first memory as a kid is hunting, fishing. That's just the way I grew up. The way I was raised.

Q. So there was an implication that the elk here that you shot was a trophy elk. Is that a trophy elk?

A. No. It's -- I would categorize it as a small six. I mean, that's like -- it's -- like trophy standards, no, it's not a trophy.

Q. So --

A. It's probably not even a 300.

Q. For those of us who are not elk hunters, what do you mean by a small six?

A. It's a 6-by-6. The -- the last -- the last tine is like small. That one's small. I mean, that -- the eye guard's, second, third, they're all mediocre, I guess and kind of -- there's a little bit of mass on the -- on

the main beam, but that's -- I mean, he probably would have been pretty good the next year or better the year after.

Q. So the six means the amount of --

A. 6-by-6.

Q. -- points on the antlers?

[426] A. Yeah. He's got six on each side.

Q. Is there some kind of scale among hunters of what is a trophy worth bragging about for -- A. Nontribal hunters usually go by Boone and Crockett. And that's a -- I don't even know what to do. But if like you get close to a 400, that's a trophy.

Q. 400?

A. Like 400, the mat -- like you add up the points and the main beam and maybe the widths, stuff like that. There's a calculation how you do it. And -- and that sends -- close to a 400 is a trophy. And if we were using that scale, this would be -- I don't even know if it was 300.

Q. Okay. So a mature elk, as Mr. Shorma described it, but not any kind of a trophy grade elk?

A. No. No.

Q. Okay. So -- and Mr. Shorma gave a -- a bit of testimony about tenderloins. What are tenderloins?

A. Tenderloins. Sometimes people get them mixed up with the -- the -- it's usually the backstrap and the tenderloins are inside the muscle. It's along the spine on the inside. You can either get into it by taking the -- the insides out here or -- or you can take the backstrap out and then get it through the outside of

the hip. I mean, there's a couple -- two ways to get it, I [427] guess.

Q. Is it good meat? Good eating meat?

A. It's probably the best meat. It's --

Q. Okay. So did you take the tenderloins from the elk you shot?

A. I take tenderloins from every elk I shoot. It's a travesty not to.

Q. So did you -- did you assist -- or did you see how the others butchered their elk?

A. Not really. I -- we all started -- I mean, we had -- we knew we had a -- after the fun was over, I mean, it's like the job -- time to get to work. I think I ended -- I think I skinned this one by myself. And I kind of skin faster than most people. And everyone was working on their own. And I even had enough time to show my nephew how to take the hide off the -- the head, take the eyeballs out, the tongue out, and just the -- lower jaw just to minimize the weight for the pack. Just kind of showing them how to throw it on and how to put your stuff on.

Q. So Mr. Shorma gave some testimony that he was not certain you took the tenderloins because he didn't see any knife marks where he would expect to see knife marks for someone who's removing the tenderloin.

A. I removed the tenderloin without touching bone. [428] You pull it and the sinew and the connections -- I mean, it's really tender. And if you just stuff your finger, you can even pull it apart. And it's better to cut that way, because you also get more meat that way, instead of just hacking at it with a knife.

Q. So you didn't leave the tenderloins behind?

A. No.

Q. Okay. So you talk about how important your girls are in your life. Would you ever take a chance at doing something that could possibly take you away from your girls?

A. No.

MR. LAROSA: I would object to the question, Your Honor.

THE COURT: It's sustained.

Q. (BY MS. GRAY) Are they in your mind when you're making decisions of how you act and what you do?

MR. LAROSA: Same objection.

A. A hundred percent of the time.

Q. (BY MS. GRAY) She hasn't ruled yet. You have to wait for the Court to --

THE COURT: I'll overrule that one. It's a general question.

Q. (BY MS. GRAY) You can answer.

A. A hundred percent of the time. I'm thinking [429] about them right now.

Q. Okay.

MS. GRAY: May I have a moment, Your Honor?

THE COURT: Yes.

Q. (BY MS. GRAY) All right. Exhibit 8. Can you tell me the title of that -- the text -- the name of the --

A. I guess -- the picture?

Q. Right.

A. The title of the picture is Good Year on the Crow Reservation.

Q. And you wrote that title, correct?

A. I wrote that.

MS. GRAY: We have no further questions, Your Honor.

THE COURT: Thank you.

Mr. LaRosa, you may cross-examine.

MR. LAROSA: Sorry, Your Honor. I'm having trouble finding an exhibit.

THE COURT: That's okay.

MR. LAROSA: 23, and it's not -- (unintelligible).

MS. GRAY: Mr. LaRosa, is this the one?

MR. LAROSA: That would be the one.

MS. GRAY: Sorry about that.

[430] CROSS-EXAMINATION

Q. (BY MR. LAROSA) Good afternoon.

A. Good afternoon.

Q. I'm going to give you State's Exhibit 23. Mr. Herrera, you testified that when you pulled the trigger, you were on the Crow Reservation. Can you identify (unintelligible)?

MS. GRAY: I'm sorry, Your Honor. I'm having difficulty hearing Mr. LaRosa's question.

Q. (BY MR. LAROSA) You said when you pulled the trigger you were on the Crow Reservation.

A. Yes.

Q. Point to where that was.

A. Where I pulled the trigger? I pulled the trigger right here. And I think the Crow Reservation is there as well.

Q. Please mark it with an X?

A. Okay. I think we were right there. I'm not sure, but close enough.

Q. And so they can see where you marked it -- this is just a bigger version -- point at it with your finger where you were when you pulled the trigger.

A. I believe I was in -- I remember these trees, maybe. So maybe right here, because we came out of the trees straight across, so...

[431] Q. Thank you.

Okay. You testified that your jurisdiction is 2.2 million miles, correct?

A. Acres.

Q. Acres. Sorry.

A. I wish.

Q. The --

A. It used to be.

Q. And is that essentially the entire reservation?

A. No. There's other tracts that we own that are not connected. But essentially, I guess, for whatever -- whatever, yeah, it's 2.2 million acres.

Q. Okay.

A. That's how we commonly describe the reservation.

Q. And you stated that -- and you -- in January of 2014, you had been warden for -- since 2012. That's when you said you went back.

A. About the end of 2012. About Novemberish. And I got laid off from the administration in December, came back on about January, actually.

Q. The -- and in January -- and you also testified, did you not, that basically you'd never been to this area where this transaction happened before until that day -- never hunted in that area before.

A. Never hunted for, yeah, elk in that area.

[432] Q. You'd gone to that area before, had you not?

A. Not really. I don't really visit the face. When I go to the mountains, I go into -- me and my daughters go into Black Canyon. We go into, you know, Black's Cabin. We go Big Bull, Little Bull, (unintelligible), go to the Wolves. I mean, to the face in general. Not really -- not a lot.

Q. The -- all right. And when you said -- you sent that email -- you -- you sent an email on January 31st to Dustin Shorma, didn't you?

A. Yes, I did.

Q. All right. And that email expressed a particular interest in an area called the border, right?

A. Yes.

Q. All right. And you, in that email, were offering to focus a particular interest of yours and hers [sic] on enforcing your mutual laws at the border?

A. Her? Who's her?

Q. I'm sorry?

A. You said "her."

Q. Her?

A. Hers?

THE COURT: You said hers. Yours and hers.

Q. (BY MR. LAROSA) Your particular interest in that email was enforcement at the border, was it not?

[433] A. Yes. I believe lieutenant at the time. I'm not sure.

Q. And Warden offered to meet with you on that occasion, didn't he?

A. Eventually, yeah. I think I ended up emailing a couple of guys and then getting to Shorma and -- yeah, we actually needed help.

Q. All right. And you met him, actually, relatively close to this area, didn't you?

A. To which area?

Q. When you met him on January 30th, you met him relatively close to the Marble Quarry Road, did you not?

A. Hmm. I think we were closer to other roads -- closer to the bridge, closer to the Little Horn. I mean, it wasn't far, but, yeah, it was in the area.

Q. And you didn't have any trouble getting there, because you know the area, correct?

A. I know most areas, yes. Especially, you know, main arteries. Like Little Horn Road. You got Red Grade and it goes over to Rotten Grass. And you've got the road that goes up into first checkpoint. It's kind of a main artery. Even people that don't know the mountain know it. And then you go into Pass Creek too, the other way, that you can go around back to the road.

Q. You testified that there was a lot of snow on [434] the day you hunted.

A. Right.

Q. And you took pictures after you killed those elk, correct?

A. Yeah. Right here.

Q. And the exhibits that you've been shown are some of those pictures?

A. Yeah. Pictures in the (unintelligible), yeah.

Q. That was one of the pictures, wasn't it?

A. Yep.

Q. And that's your -- I believe your nephew, right?

A. That is my nephew, Baby Colton, is what he's referred to as.

Q. And how deep is the snow? It's not very deep at all, is it?

A. Yep. But snow varies too. If you're a hunter, you got drifts and --

Q. In that location, it isn't, is it?

A. No, not in that location.

Q. And that location isn't far from the Marble Quarry Road, is it?

A. I'm not -- I think the road's this way. But it shouldn't be too far from the road.

Q. This isn't very far from where you pulled the trigger, is it?

[435] A. I'd say we were about 250 yards, maybe 300. A pretty decent length for shooting. I mean,

typically hundred yards would be the best -- would be not far.

Q. So you were in the area of the Marble Quarry Road when you pulled the trigger, weren't you?

A. Hindsight, yeah. There's maps that say Marble Quarry pointed to the area where we were at, and it's pretty close to it.

Q. You would agree that you're supposed to know where you get to do your job, right?

A. What do you mean?

Q. Where your -- where the -- let me ask you this. The -- you're a game warden on the Crow Tribe, right?

A. Yes.

Q. Okay.

A. Captain.

Q. And you enforce the laws where you have authority to act, correct?

A. I enforce the -- we actually -- yeah, the Title 12 Fish & Game code.

Q. And where you work it's the hunter's responsibility to know where he is, isn't it?

A. It's usually how it is, yeah.

Q. And you tell them that in the information you publish, don't you?

[436]

A. I tell them -- the booklet says, yeah.

Q. And, particularly, you tell them they need to know where the exterior boundaries of the Crow Reservation are, don't you?

A. Yes.

Q. On the day you met Dustin Shorma -- and you met him close to the border, didn't you?

A. Our first meeting?

Q. Yeah. January 30th.

A. We met -- yeah, we --

Q. It was January 30th, was it not? Was it on January 30th?

A. I believe so. I don't mark down every date I meet someone, but I'm pretty sure it's pretty accurate.

Q. And you made him close -- you met him close to the border, did you not?

A. Yeah, on the reservation.

Q. And across from the border is Hunt Area 38, correct?

A. I don't know your areas.

Q. You were offering to help him police his area, were you not?

A. Not -- no, I wasn't. I was actually looking for help, because we have the same problem on our side. And I have no authority on his side, but what I wanted to do is [437] build a partnership and try to get some of the guys on my side, and maybe, you know, match some of these carcasses to some heads hanging on some sheds of some, you know, well-known poachers. People that waste. I mean, the way he talked and the way he felt, I mean, I felt the same exact way as he did. And it hits home to me, and it's -- it's the way I was raised by my mom and grandma and dad and family, so...

Q. And he expressed some interest in doing likewise, right? He was interested --

A. Yeah.

Q. -- in -- in prosecuting violations on his side and catching people, including members of the reservation, who were doing illegal activities in Wyoming, correct?

A. I wasn't so worried about Wyoming side. I was worried about our side.

Q. I'm asking what he asked you. He expressed an interest in that, did he not?

A. Yes, he did express interest.

Q. And he actually even named a name, didn't he?

A. I think we talked about several names. I think he even -- yeah, I remember a couple -- couple names that he had stated. But, yeah.

Q. He mentioned DL Singer in particular, did he not?

[438] A. Yes.

Q. All right. And, I mean, you didn't tell him like he was a good buddy of yours at the time, did you?

A. He's not a good buddy of mine.

Q. Okay.

A. And on the reservation, you have to deal with close relations, especially when I was an officer. And you have to distinguish that from personal and business. And as a cop, I even arrested my own wife once. I had to. So -- but it's tougher on the res than off res. You've got to understand it's two different societies, and in order to do that job, I mean, you got to deal with people you know.

Q. I believe you've answered my question, sir.

A. All right.

Q. You acknowledged that you did post those photos at the Monster Muleys place, correct?

A. Yes.

Q. All right. And you don't really consider the animal you killed to be a trophy, right? That's what you testified?

A. No, it's -- I mean, it's -- it's decent. He's a good one, but he's not -- he's not the trophy.

Q. Right. But you did post him in a forum that was a contest for big bucks, big bulls and other big game?

[439] A. Oh, there's hundreds on there, and there's so many nontrophies on there. It's -- I posted it on there. It's -- it's a hunters forum. You check out people's kills. People -- their first time kills and people with their kids on there. There's all kinds. It's not just trophies.

Q. It was a forum that invited people to post what they thought they considered a large animal -- a large trophy animal, was it not?

A. I don't even think the winner would be a trophy.

Q. I didn't ask you that, though. I asked you the forum invited people --

MS. GRAY: Your Honor, I --

Q. (BY MR. LAROSA) -- to post what they considered to be a trophy animal.

MS. GRAY: I object.

Q. (BY MR. LAROSA) Correct?

MS. GRAY: Mr. Herrera's (unintelligible) answer.

A. No. You're saying it has to be a trophy, and --

THE COURT: I'll overrule.

Just answer the question, please.

A. I don't believe it is --

Q. (BY MR. LAROSA) The forum invited people to post big bucks, big bulls and other big game?

[440] A. But everyone thinks theirs is big, but yeah.

Q. Okay.

A. That's what it says.

Q. And that's not the first time you posted at Monster Muleys, is it?

A. No.

Q. And you also post on your Facebook page, don't you?

A. I have all kinds of stuff.

Q. And you posted lots of animals there?

A. Yeah, I'm a hunter, an Indian.

Q. To be clear, this is the area where the kill took place, is it not?

A. That's what it's marked on here as, and I'll agree to that, yeah. That looks like the area it was killed. It looks like the burnt-out -- burnt-out trees there, and maybe those are the trees behind that that were kind of going over the other side of the ridge.

Q. And you just testified you pulled the trigger when you were in this area, correct?

A. Yes, I did.

Q. You previously told others that when you did that, you knew you were in the state of Wyoming, hadn't you?

A. No, I didn't. Because I believe I was on the [441] res to this day.

Q. You gave an interview to the Billings Gazette, did you not?

A. Yes, I did.

Q. And you told them you knew when you pulled the trigger, that you were on -- in the state of Wyoming, did you not?

A. I don't think I was quoted as saying anything, but I'd have to review.

Q. Did he get his information from you?

A. We were talking, yeah. Most of his information.

Q. And you told him that, didn't you?

A. I cannot -- I don't recall saying that exact wording, or even thinking I was in Wyoming. That would be a violation.

MR. LAROSA: May I have a moment, please?

Q. (BY MR. LAROSA) In that same interview you did tell him that you killed three elk, didn't you?

A. Yeah. I mean -- yeah, I think I did.

Q. And you told him you saw them in the vicinity of Eskimo Creek, right?

A. As it was labeled by Wyoming, state of Wyoming.

Q. And you told them --

MS. GRAY: Your Honor, may I ask (unintelligible) ask questions in detail about something [442] that Mr.

Herrera hasn't seen, can he see a copy -- (unintelligible).

Q. (BY MR. LAROSA) Do you recall speaking with a reporter?

A. Brett French, yes.

THE COURT: Overruled. You can question on this line.

Q. (BY MR. LAROSA) And did you read the article when it came out?

A. I -- yes, I did, but I didn't -- I don't really like reading it, because there's a lot of bad things that come after as comments and --

Q. You told him it was Ronnie's first elk?

A. I believe we both did. I -- I'd have to read it again and think about it. It was a while ago.

Q. Was it Ronnie's first elk?

A. It was Ronnie's first elk.

Q. And did you tell Dustin Shorma it was Ronnie's first elk?

A. I might have.

Q. Did he --

A. I wouldn't argue against it.

Q. And you told -- you told the reporter that it took a while to pack it out, correct?

A. Took us eight hours to pack them out, actually. [443] I had two legs. I had two backstraps and a head. And the snow, I think --

Q. Your testimony is he got the other thing you said wrong?

A. What's that?

Q. That you knew you were in Wyoming when you took the shot.

A. I think we were on the Crow Reservation.

Q. This hunt happened in January -- on January 18th, correct?

A. It sounds accurate.

Q. And the elk that you're wearing and the elk you're kneeling beside is the one you killed?

A. Yeah.

Q. And the others were killed as part of what you described as a collective action, us working together, correct?

A. I don't -- I mean, I don't get what that question says.

Q. You testified when Ms. Gray was asking about hunting --

A. Everyone picked --

Q. -- hunting is a collective thing you do together. You do it all at the same time. You work with each other. That was your testimony, correct?

[444] A. Yeah, I would have to explain that the way we are shooting, in order to answer this question accurately, if you don't mind.

Q. The -- but you did say that? I'll ask --

A. Yeah, we're -- we're on -- we're a hunting party. We're hunting.

Q. Yeah. Okay.

A. And, yeah, we're all killing and succeeding.

Q. And that's what happened on this occasion, is it not?

A. Yes.

MR. LAROSA: I have no more questions.

THE COURT: Any redirect?

MS. GRAY: Nothing further, Your Honor.

THE COURT: All right. You may step down.

MS. GRAY: Your Honor, subject to the issue we discussed of offers of proof, the defense rests.

THE COURT: All right. Let me have counsel approach.

(Inaudible sidebar conference.)

THE COURT: All right. Ladies and gentlemen, as you guessed, we're not going to get through today. So -- but I am going to go ahead and we're going to take an early recess for the jurors. So I will be releasing you. At this time there's some matters the * * *

Excerpt from State's Response to Motion to Dismiss
(Circuit Court of Sheridan Cty. Aug. 6, 2015)

* * *

It is no surprise that he makes this claim, because the acts for which he is charged occurred in the Big Horn National Forest, which is still owned by the United States, and which comprised hunting districts of the Crow tribe at the time the Fort Laramie Treaty was negotiated. *See Repsis*, 73 F.3d at 985-86 (noting that the lands ceded in the 1868 Treaty included the Big Horn National Forest); Def.'s Br. at 8 (citing to the 1851 treaty).

* * *

Motion for Status Conference re Evidentiary Hearing (Circuit Court of Sheridan Cty. Aug. 6, 2015)

COMES NOW the State of Wyoming, by and through its undersigned attorney, and hereby moves this court for a status conference to discuss further proceedings in this matter. The filings and briefs in this matter by both parties indicate that an evidentiary hearing should occur, so that evidence admissible under the rules may be received and considered where relevant to the multiple issues before the court. The timing and length of such a hearing needs to be discussed with the court. A status conference would allow this to happen.

The State asks that its motion be granted. A proposed order is attached.

RESPECTFULLY SUBMITTED this [handwritten: 6th] day of August, 2015.

[handwritten: signature]
Christopher LaRosa #6-4025
Deputy County and
Prosecuting Attorney
148 S. Brooks St.
Sheridan, Wyoming 82801
Tel (307) 674-2580;
Fax (307) 674-2585

CERTIFICATE OF SERVICE

I, Christopher LaRosa, Deputy County and Prosecuting Attorney, Sheridan County, Wyoming, do hereby certify that I served a true and correct copy of the within and foregoing Motion of Extension of Time this [handwritten: 6th] day of August, 2015, by depositing a copy thereof in the United States Mail, postage prepaid and duly addressed to the following:

Kyle A. Gray & Steven T. Small	[✓]	U.S. Mail
Holland and Hart	[ ]	Facsimile
400 N. 31st Street, Suite 1500	[ ]	Hand
P.O. Box 639	[ ]	Delivery
Billings, MT 59103	[ ]	FedEx

[handwritten: signature]
Christopher LaRosa

Exhibit A to Defendant's Motion for Reconsideration (Circuit Court of Sheridan Cty. Apr. 12, 2016)

Excerpt from Wyo. Game and Fish Dep't Investigative Report

Wyoming Game and Fish Department Investigative Report	Case Number: 33114/16
	Reporting Officer: Dustin Shorma
Sheridan Region - 700 Valley View Dr., Sheridan, WY 82801	Report Date: 5/20/14
Telephone: (307) 738-2455 Fax: (307) 672-0594	Violation Date: 1/18/14

* * * elk)" and a citation for "Accessory to: Take a Big Game Animal (bull elk) During a Closed Season." Colton signed and accepted both citations.

I then asked Colton if he would return the elk head his son had shot. Colton said he would, so we followed him over to his residence in Crow Agency. Colton stepped inside and retrieved a 5x5 bull elk head that I identified from the photographs recovered off the Monster Mulies web page. The head was seized on seizure tag number #19430. I gave Herrera a receipt from the seizure tag from the bull as well as my business card and advised him that he could contact me if he had any questions.

INTERVIEW WITH RONNIE FISHER

On October 2, 2014 at approximately 12:30 hours, Special Agent Dave Rippeto with the US Fish &

Wildlife Service and I were able to contact Ronnie Fisher via cell phone. Fisher was shopping with his wife in Billings, MT at the time and was not home. Dave told Fisher that we would like to talk to him and if he got back to give us a call.

We made several attempts to locate Darren "DL" Singer and Ronnie Fisher. None of the attempts were successful at the time.

At approximately 14:01 hours I left this message on DL Singer's Facebook page:

"DL, I would like to meet with you to talk over some issues. Please call me, it is important 307-751-2438,"

Thank you,

Dustin Shorma

At approximately 14:10 hours, Fisher called back stating he was at his parents residence of 294 Pretty on Top Lane, in Crow Agency and would be willing to meet with us.

We arrived and met Fisher at approximately 14:35. We introduced ourselves and asked him if we could talk about his elk hunting. Fisher agreed, and provided us with the following information:

1. He had hunted elk several times since the beginning of the year. Usually he hunts the Wolf Mountains but also hunted the Bighorns.

2. He only killed one elk and that was while hunting in the Bighorns.

3. Clayvin Herrera had texted him and asked him if he wanted to go hunting the following morning. Clayvin apparently had observed some elk that evening.

4. Ronnie knows Colton and Clayvin Herrera from playing basketball.

5. They left at 5:00 hours the following morning from Crow Agency. The drove to Wyola, then up the Little Horn Road to the Rotten Grass Road.

6. When they got to the face of the mountain, they observed a bunch of elk on the Montana side of the state line. They tried driving up to the face but a snowdrift blocked their progress. They then walked the rest of the way.

7. Ronnie didn't know the area or how close they were to the state line. They jumped a couple fences on their way up.

8. Ronnie was in the lead. Also hunting that day were Colton Sr., Colton Jr., Clayvin, Daniel Ceasley and "DL" Singer.

9. The large group of elk moved across another ridge between the hunters to the south west (edge of the West Fork of the Little Horn).

10. Ronnie saw the three bulls "in the willows." DL Singer had walked past the group and was up above the group. Everyone shot at the bulls except DL and Daniel.

11. Ronnie guessed he was about a mile into Wyoming.

12. Clayvin made a comment when they got to one of the bull about "practicing their treaty rights."

13. They spent the whole day out there hunting and packing meat. When the elk were dropped, they called for Barry Whiteman to come and assist them.

14. DL Singer is a cousin to Ronnie.

15. Some "pieces" of the elk that they left were "wounded". Ronnie packed out two hindquarters and a front quarter along with the head. At the bottom, all the meat was split up, Ronnie got a back strap and a hindquarter.

16. Ronnie didn't know there was a fourth bull. They only saw three bulls.

We asked Ronnie what he shot the bull with. He told us he used his 7mm and said he didn't have it. We talked a little bit about the case and then discussed the Lacey Act. Ronnie then said he had the rifle with him and produced a Howa Model 1500 with a Leopold 3x9 scope. The serial number on the rifle was B005762. The rifle was photographed and returned to Ronnie.

We then followed Ronnie out to his in-laws residence on Reno Creek Road. Ronnie drove past the houses and recovered the bull elk head from a truck box sitting in a "bone yard" for the ranch. The head was seized under seizure tag #863495. I advised Ronnie I could issue him a citation if he would accept it and he said he would.

Ronnie Fisher was issued one citation for "Take Antlered a Big Game Animal."

Investigation pending.

State's Trial Exhibit 6

Email from Clayvin Herrera dated Jan. 13, 2014

* * *

From: Clayvin Herrera * * *
Date: Mon, Jan. 13, 2014 at 5:26 PM
Subject: poaching
To: wgfdwebmaster@wyo.gov * * *

Greetings,

I would like to contact anyone who has an interest in poachers. Especially poachers near the border with the Crow Indian Reservation in Montana. We would like to start building relationships with our neighbors that would be mutually beneficial. Please email me back or call me at * * *. I would like to help in any way we can to catch violators near our mutual borders. Thanks.

Clayvin Herrera
Captain
Crow Nation Fish & Game
* * *

State's Trial Exhibit 8

Page and Photographs from MonsterMuleys.com

Good Year on the Crow Reservation

"Good Year on the Crow Reservation" Photo provided by: Clayvin Herrera

Clayvin Herrera scored quite well (top 2 photos), as did Ronnie Fisher (3rd pic), Clayvin's nephew, Colt Jr., and sister, Adree (bottom photo). It was a good year on the Crow Reservation in Montana.

State's Trial Exhibit 9
Excerpt of Email Chain Between
Dustin Shorma and Clayvin Herrera

Dustin Shorma * * * Mon, Feb 10, 2014 at 7:30PM

To: Clayvin Herrera * * *
Bcc: Scott Adell * * *

Hey Clayvin,

I was wondering if you could help me on a poaching case I've been working on.

Have you had any bull elk heads come in the past week with someone wanting a transportation tag?

I had a bull elk poached near the WY/MT line. The head and a small amount of back strap was removed, the rest was left to rot. This would have happened late Friday night, early Saturday morning. I was through there Friday afternoon and didn't see anything, but did see the footprints late Saturday night while on patrol. I was too dark to find anything then so I just found the dead bull this evening.

It is sad to see someone shoot a bull during the winter and leave all the meat to go to waste. If you hear anything or know anyone with a bull elk head (no body) they want tagged would you mind contacting me?

Thanks for all your help,

Dustin Shorma

--

Dustin Shorma
Game Warden
P.O. Box 27
Dayton, WY 82836

Clayvin Herrera * * * Mon, Feb 24, 2014 at 9:45AM
To: Dustin Shorma * * *

Dustin,

Hey sorry I haven't responded. I have been out of the office for a couple weeks on the road promoting bison hunting in Salt Lake City, Utah.

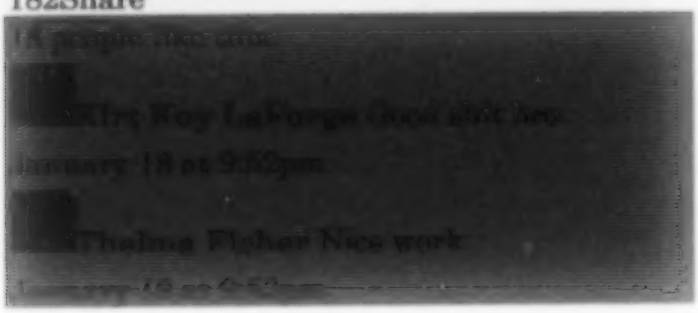
Give me some good locations and I can throw them on a map as well as the dates.

Let's get these poachers!

State's Trial Exhibit 10

Photographs from Facebook

182Share



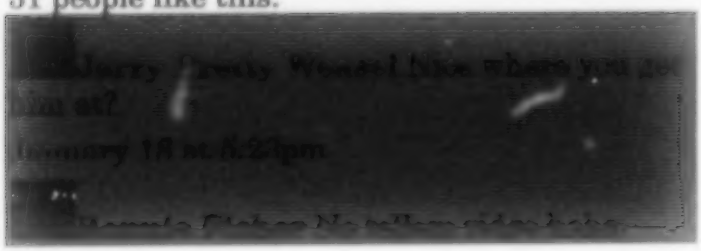
Ronnie Fisher

January 18

First b··ll — with Jerry Pretty Weasel and Daniel Ceasley.

5119Share

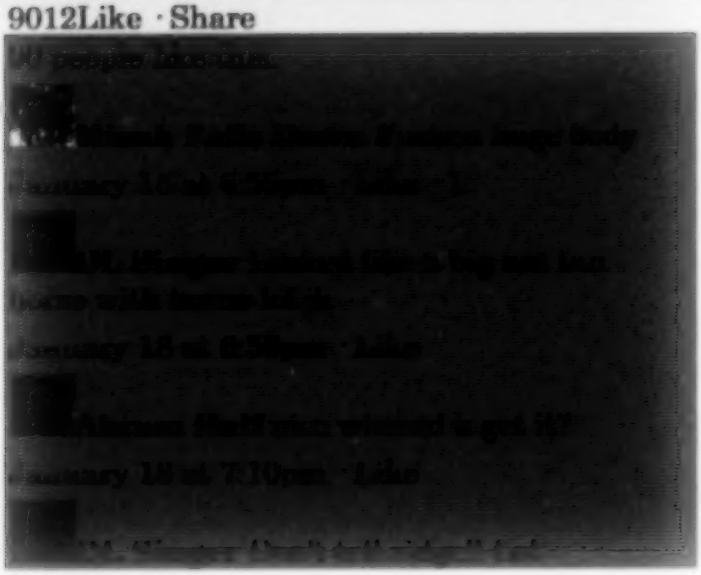
51 people like this.



State's Trial Exhibit 11

Photograph from Facebook

9012Like · Share



State's Exhibit 32

Redacted Version of Appellant/Defendant Herrera's Opening Brief in District Court, Fourth Judicial District (Mar. 7, 2016)

* * *

[Redacted by State in Exhibit]

II. Statement of Case

A. Nature of the Case, Course of Proceedings and Disposition Below.

1. Nature of the case.

This is a misdemeanor criminal proceeding. (R.1-2). The State of Wyoming is prosecuting Herrera, who the State alleges in January 2014 illegally took an elk in the BHNF (and aided other Crow tribe members in doing the same) in violation of Wyoming's closed-season and hunting licensing laws, W.S. § 23-3-102(d) and§ 23-6-205. (*Id.*).

[Redacted by State in Exhibit]

B. Statement of the Facts.

Herrera is an enrolled member of the federally-recognized Crow Tribe. (R.303, 306). He resides at St. Xavier, Montana, which is located on the Crow Reservation. (R.1-2). In January 2014, Herrera (a deputy game warden for the Crow Tribe) and several other tribal members decided to hunt for elk on Crow Reservation lands, intending to return with meat to help feed their families over the winter months. (R.838). Petitioner and his fellow tribal hunters spotted several elk on the Reservation in the vicinity of Eskimo Creek, and tracked them on foot through the snow. At some point, the elk—with the tribal

hunters in pursuit—apparently crossed over the Montana-Wyoming border and into the Bighorn National Forest. Three elk were shot, quartered, and packed out of the mountains on the backs of the tribal hunters, who later distributed the elk meat among their families and other tribal members.[2]

[Redacted by State in Exhibit]

Dated this 7th day of March, 2016.

[handwritten: signature]
Kyle A. Gray (#5-2297)
* * *

[2] [Redacted by State in Exhibit] some of these facts are not in the record. Herrera certifies that if such a hearing were to be held, these facts would be established. [Redacted by State in Exhibit] While Herrera is not certain the elk were shot in Wyoming rather than on the Crow Reservation, for purposes of this appeal he does not contest that the elk were taken on the Bighorn National Forest.

Exhibit A to Appellee's Supplemental Brief in *Herrera v. Wyoming*, No. CV-2016-000242, Fourth Judicial District Court, Sheridan Cty. (Jan. 30, 2017) (Amended Complaint, *Crow Tribe of Indians v. Repsis*, No. 92-cv-1002 (D. Wyo. Aug. 5, 1992))

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING
CASPER DIVISION

No. 92-cv-1002

CROW TRIBE OF INDIANS and THOMAS L. TEN BEAR,
Plaintiffs,

v.

CHUCK REPSIS, Individually, FRANCIS PETERA, Individually and as Director of the Wyoming Department of Fish and Game, and FRANCIS PETERA, Individually and as Director of the Wyoming Game and Fish Commission,
Defendants.

Filed: Aug. 5, 1992

AMENDED COMPLAINT

COME NOW Plaintiffs above-named, through counsel, and for their complaint against Defendants and each of them, state and allege as follows:

JURISDICTION

1. Jurisdiction of this action arises under 28 U.S.C. §1331, because it involves a federal question, under 28 U.S.C. §1332 as an action against another state, under 28 U.S.C. §1362, as an action brought by an Indian Tribe, and under 28 U.S.C. §2201 as an action seeking declaratory relief.

PARTIES

2. Plaintiff Crow Tribe is successor in interest to the Crow Tribe who was a party to the Fort Laramie Treaties of 1851 and 1868. It is acting in its own behalf and in behalf of its members, namely members of the Crow Tribe. Plaintiff Thomas Ten Bear is a lawful member of the Crow Tribe of Indians.

3. Defendants are engaged in the promulgation and enforcement of hunting and fishing laws and regulations in the State of Wyoming. At all times relevant hereto, the acts of the specified defendants were carried, out by their duly authorized officers, employees, and agents, and were ratified and approved by Defendants, and each of them.

COUNT I: DECLARATORY JUDGMENT: OFF-RESERVATION HUNTING RIGHTS

4. This action is founded on certain Indian Treaties with The Crow Tribe of Indians, approved by the Congress of the United States. Pursuant to the Fort Laramie Treaties of 1851 and 1868, Plaintiffs hold hunting and fishing rights on certain off-reservation lands ceded to the United States, and hold exclusive hunting and fishing rights on Indian and trust lands within the exterior boundaries of the reservation. Article 5 of the 1851 Treaty provides:

> In making selections of territories the tribes do not abandon or prejudice any rights or claims they may have in other lands and do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country described.

A copy of said treaty is attached hereto as Exhibit "A", and is incorporated by this reference as if fully set forth herein. Pursuant to the Fort Laramie Treaty of 1868, Plaintiffs continued to retain said rights, Article 4 of said treaty providing as follows:

> Crows agree to make above described area their permanent home and not to settle elsewhere. But shall have right to hunt on the unoccupied lands of the United States so long as game may be found thereon . . . .

A copy of said treaty is attached hereto as Exhibit "B", and is incorporated by this reference as if fully set forth herein.

5. The above-referenced treaties reserve to Plaintiffs unrestricted hunting and fishing rights on all of the ceded lands which have not since that time been patented and appropriated to private ownership, including but not limited to National Forest lands, and they reserve to Plaintiffs exclusive hunting and fishing rights on Indian and trust lands within the exterior boundaries of the reservation.

6. All subsequent agreements and treaties between the Crow Tribe and the United States have ratified and approved said treaties, at no time has the United States Congress expressed any intention to abrogate them or in any way to extinguish the rights

so reserved, and said hunting and fishing rights remain to this date in full force and effect.

7. The above-referenced treaties bind the State of Wyoming, its agents, employees and their successors in office, under the Supremacy Clause, U.S. Constitution, Art. VI, clause. 2, which imposes upon the states the obligation to observe and carry out the provisions of treaties of the United States.

8. On or about November 14, 1989, Defendant Repsis, under color of state law, charged Plaintiff Ten Bear, a member of the Crow Tribe of Indians, with shooting an elk on National Forest land which was part of the land ceded to the United States by the Fort Laramie Treaties, without having first purchased a Wyoming hunting license. The Forest Service land on which the alleged offense took place was unoccupied lands of the United States. Plaintiff Ten Bear was actually detained and issued a citation while on land that is part of the Crow Indian Reservation in the State of Montana.

9. On or about December 4, 1989, Plaintiff Ten Bear, through counsel, filed a Motion to Dismiss the charges based on the treaty rights above-stated, on the ground that he was entitled to hunt on said land without being required to buy a Wyoming hunting license, On July 17, 1990, County Court Judge Duane C. Buchholz denied said motion, holding that he did not have any treaty-reserved, off-reservation hunting rights, and that he needed to qualify as a non-resident hunter before taking "Wyoming game". A true and correct copy of said Memorandum of Decision is attached hereto as Exhibit "C". On or about October

25, 1990, Mr. Ten Bear was found guilty of illegally killing an elk, in violation of Wyoming's game laws.

10. The United States Congress has never authorized the State of Wyoming to impose licensing fees on Plaintiffs or in any way to interfere with or impair Plaintiffs' treaty-reserved, off-reservation hunting and fishing rights. Defendants may not enforce licensing or other state hunting laws and regulations on Plaintiffs when they are exercising their treaty-based hunting rights in such protected areas, as any such interference violates the Fort Laramie Treaties.

COUNT II: DECLARATORY JUDGMENT: ELK-PROOF FENCE

11. Plaintiffs reallege each and every allegation contained in Count I hereof and incorporate them by this reference into this Count II as if fully set forth herein.

12. The State of Wyoming and its agents and employees have erected an "elk fence" approximately six miles long from a point on the Little Big Horn River in Section 20, Range 89 West running south and east to a point at or near the northwest corner of Section 31, Range 88 West, as depicted by the "x"es on the attached Exhibit "D". The purpose and effect of said fence is to prevent elk herds from following their natural migratory course from higher summer elevations on the eastern slopes of the Big Horn Mountains, to areas that would otherwise constitute part of their winter range in southern Montana, including but not limited to lands within the Crow Indian Reservation.

13. Plaintiffs are informed and believe that the United States Congress has never authorized the construction, management or maintenance of said elk-proof fence, or authorized Defendants in any way to maintain such a fence in such a way as to interfere with or impair Plaintiffs' treaty-reserved hunting and fishing rights.

14. Plaintiffs' hunting rights may not be diminished by unilateral choices of the State to put parcels of public land to uses incompatible with Plaintiffs' continued exercise of their usufructuary rights, Defendants bear a duty to refrain from actions interfering with those rights, and the State constructed said fence subject to that duty. Defendants may not subordinate Plaintiffs' treaty-based hunting rights to those of the citizens of Wyoming or force treaty Indians to yield their own protected interests in order to promote the welfare of Wyoming citizens.

15. Since the effect of said fence is to interfere with Plaintiffs' access to protected off-reservation hunting areas, and the number of elk present on protected on and off-reservation hunting areas, Defendants' continued maintenance of said fence violates their duties under the treaty. The management and supervision of said fence is therefore unlawful in that it constitutes the maintenance of a device which gives them exclusive possession of the subject elk and elk hunting places, and has the effect of preempting Plaintiffs' treaty-based hunting rights.

16. Notwithstanding Plaintiffs' rights under the treaties, and regardless of whether or not the maintenance of said fence violates Plaintiffs' hunting

rights under the treaties, the elk of the Big Horn National Forest (including but not limited to those which would otherwise winter in southern Montana if not blocked from doing so by artificial means) are a natural resource which may not be wholly owned by, or preserved solely for the inhabitants of, the State of Wyoming. Defendants have an affirmative duty to abstain from managing said herds in such a way that identifiable elk are prevented from actually reaching those places. But for Defendants' maintenance of said elk-proof fence, certain of said elk would otherwise be destined for areas in Montana, including but not limited to areas within the Crow Reservation. Therefore, whether or not Plaintiffs are entitled to share in the elk resource by virtue of their rights under the treaties, they are entitled to an equitable apportionment thereof.

17. The construction and maintenance of said fence is also unlawful in that it, in combination with natural barriers, wrongfully fences in federal land in violation of the Unlawful Enclosures of Public Lands Act, 43 U.S.C. §1061 et. seq.

18. The actions of Defendants as above-described are ultra vires acts beyond their lawful jurisdiction and deprive Plaintiffs of rights, privileges and immunities granted to them by laws and treaties of the United States which permit Plaintiffs to be free from the exercise of state hunting and fishing laws and regulations except where such freedom has been specifically withdrawn by the United States Congress. The Fort Laramie Treaties prevent Defendants from enforcing regulations, or otherwise interfering with Plaintiffs' treaty-reserved hunting rights, both on

their reservation and on off-reservation unoccupied lands, including but not limited to National Forest Service lands.

19. The efforts of Defendants to so impair the exercise of Plaintiffs' hunting rights have caused damage to Plaintiffs and show the existence of a justiciable controversy between Plaintiffs and Defendants within the jurisdiction of this Court.

COUNT III: INJUNCTIVE RELIEF

20. Plaintiffs reallege each and every allegation contained in Counts I and II hereof and incorporate them by this reference into this Count III as if fully set forth herein.

21. Defendants' continued enforcement of hunting and fishing regulations which violate Plaintiffs' rights under the treaties, and their continued maintenance of the elk-proof fence, has and will continue to cause damage to Plaintiffs and other members of the Crow Tribe that is otherwise irreparable.

22. Plaintiffs have no plain, speedy, or adequate remedy at law for Defendants' actions, because the loss of hunting rights resulting therefrom is impossible of monetary measurement, and since in the absence of injunctive relief, Plaintiff Crow Tribe's members will have to resort to a multiplicity of actions each time any of them are faced with having to defend a prosecution based on Defendants' unenforceable hunting or fishing regulations.

23. Injunctive relief is therefore necessary to prohibit Defendants and each of them, and all of their agents, employees and successors in office, from enforcing hunting regulations or maintaining fences

or other artificial obstructions, which violate the protected hunting rights of Plaintiffs and other members of the Crow Tribe under the Fort Laramie Treaties, in order to prevent an irremediable loss of hunting rights preserved by treaty and to prevent further repeated judicial proceedings against Plaintiff Crow Tribe's members.

WHEREFORE, PLAINTIFFS PRAY for relief as follows:

a. To issue a declaratory judgment declaring the rights of the parties hereto under the laws and treaties between the Crow Tribe of Indians and the United States and under the provisions of the Wyoming Game and Fish laws and regulations;

b. For judgment declaring that, pursuant to the Fort Laramie Treaties, Plaintiffs retain their treaty-reserved, off-reservation hunting and fishing rights on ceded, unoccupied and public lands, and that such rights preclude state regulation;

c. For judgment declaring that Defendants, and all of their agents, employees and successors in office, may not interfere with the exercise of Plaintiffs' hunting and fishing rights;

d. That, on final hearing, Defendants and each of them, and all of their agents, employees and successors in office, be permanently enjoined from enforcing Wyoming hunting and fishing laws and regulations against Plaintiffs and other members of the Crow Tribe of Indians, for their exercise of hunting and fishing rights on the ceded, unoccupied lands as protected and reserved under the Fort Laramie Treaties;

e. That, on final hearing, Defendants and each of them, and all of their agents, employees and successors in office, be permanently enjoined from maintaining the elk-proof fence depicted by the attached Exhibit D or any other such fence erected in its place, or obstructing by any other means the natural migration of the Big Horn Mountain elk herds to their chosen winter range.

f. For Plaintiffs' reasonable fees and costs necessarily incurred in prosecuting this action, and for such other and further relief as this Court may deem just and equitable.

DATED this [handwritten: 3rd] day of [handwritten: August], 1992.

[handwritten: signature]
THOMAS E. TOWE
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that the foregoing AMENDED COMPLAINT was duly served upon the following parties or their attorneys of record by depositing true and correct copies thereof in the United States Mail, postage prepaid, at their last known address this [handwritten: 3rd] day of [handwritten: August], 1992.

Attorney General's Office
STATE OF WYOMING
Attn: Ronald Arnold
123 Capitol
Cheyenne, WY 82002

Bruce P. Badley
BADLEY & RASMUSSEN, P,C,
P. o. Box 648
Sheridan, WY 82801

[handwritten: signature]
Thomas E. Towe
Attorney for Plaintiffs